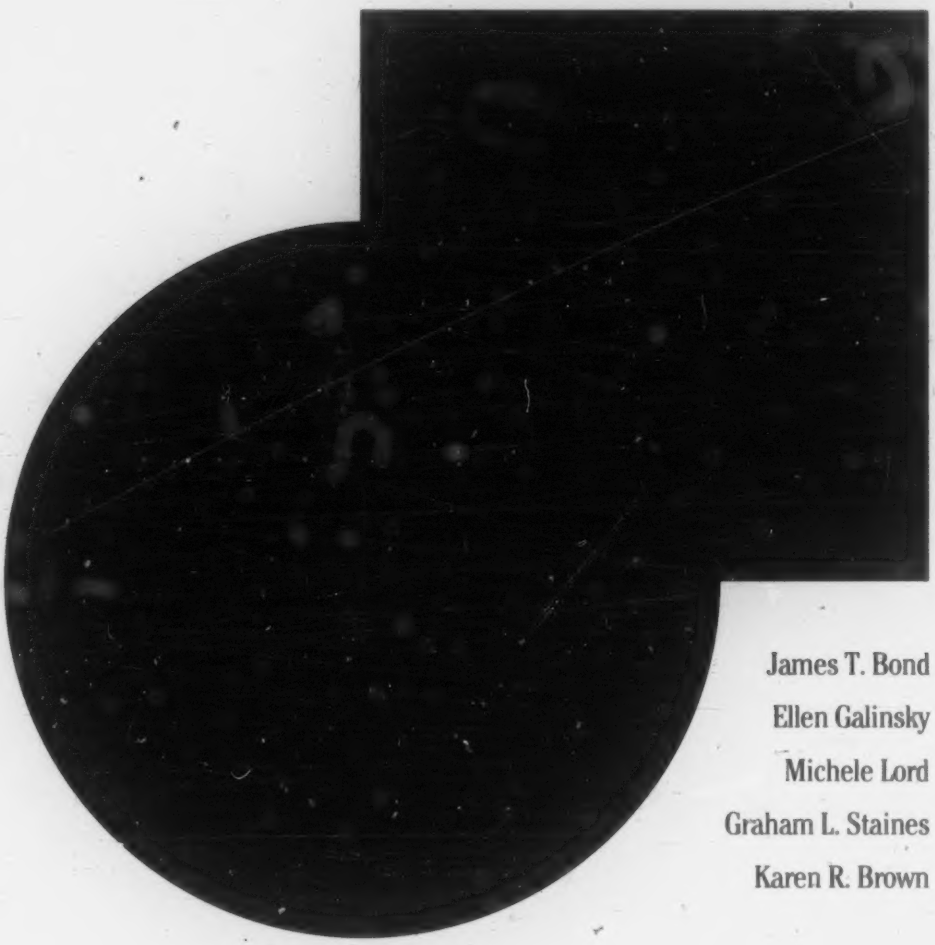
- R4860 - 1F 7/91

Beyond the Parental Leave Debate

The Impact of Laws in Four States



James T. Bond
Ellen Galinsky
Michele Lord
Graham L. Staines
Karen R. Brown

Families and Work Institute

The Families and Work Institute is a non-profit research and planning organization that conducts research on business, government, and community efforts to help employees balance their job and family responsibilities.

© 1991 by Families and Work Institute

ACKNOWLEDGEMENTS

Research assistance by
Donna Tyson
Leslie Gates
Gita Srinivasan

Graphics design / Word processing by
Robin Mower

Edited by
Veronica Plowden
Marie Van Loan

Special thanks to
Mary Beth Ostendorf Harvey
Catherine Morrison
Dana Friedman

Data collection and data processing by
Social and Economic Sciences Research Center
at Washington State University at Pullman
John Tarnai
M. Chris Paxson
Todd Rockwood
Nonhlanhla Mjola
Erika Tess Ihinger
Anita Judson
Finch Johnston
Thomas Barry Allen
Cindy McGuire
Rodney Baxter
Belinda Gray
Keith Onken
Steven B. Herrera

Cover design by
Page, Arbitrio & Resen, Ltd.

Printing
TSO General Corporation

TABLE OF CONTENTS

Page

Executive Summary i

Introduction 1

Chapter I: The Debate Until Now 3
- The Impact on Business 3
- The Impact on Parent Employees 12
- Conclusion 14
- References 15

Chapter II: The State Parental Leave Study 17
- Approach: State Advisory Panels 19
- Panel of National Experts 20
- Questionnaire Design and Methodology 21

Chapter III: Impact on Employers 27
- Leave Policy and Practice Affecting Biological Mothers 27
- Leave Policy and Practice Affecting Biological Fathers 40
- Leave Policy and Practice Affecting Adoptive Parents 43
- Implementation Issues 48
- References 61

Chapter IV: Impact on Parent Employees 63
- Leave-taking by Biological Mothers 63
- Leave-taking by Biological Fathers 76

Chapter V: Enforcement 79
- Wisconsin 80
- Oregon 88
- Conclusion 94
- References 96

Conclusion 97

Appendix

- State Advisory Panels
- Panel of National Experts
- How to Find Questionnaires and Statutes
- Summary of States with Parental, Family, or Medical Leave Legislation

LIST OF FIGURES

FIGURE	TITLE	PAGE
1.1	Leave with Benefits and Guarantees Incidence—By Type of Leave and Firm Size	4
1.2	Effects of Different Employer Size Exemptions	6
2.1	Summary of Statutory Provisions—By State, Type of Leave, Date in Effect	18
2.2	Exemption Thresholds and Required Length of Leaves—By State	19
2.3	Employer Questionnaires	23
2.4	Parent Questionnaires	24
3.1	Pre-statute Employer Leave Policy and Practice for Biological Mothers After Childbirth	29
3.2	Pre-statute Employer Leave Policy and Practice for Biological Mothers After Childbirth—By Employer Size and Industry Type	34
3.3	Partial Compliance—Percentage of Covered Employers Meeting Statutory Requirement for Length of Job-guaranteed Leave for Biological Mothers Prior to Passage of State Statute—By State	38
3.4	Full Compliance—Percentage of Covered Employers Meeting All Statutory Leave Requirements for Biological Mothers Prior to Passage of State Statute—By State	39
3.5	Pre-statute Employer Leave Policy and Practice for Biological Fathers After the Birth of a Child	41
3.6	Biological Fathers—Percentage of Covered Employers Already Meeting Most Major Statutory Requirements Regarding Leave for Biological Fathers After the Birth of a Child—By State	42
3.7	Pre-statute Employer Policy and Practice Regarding Leave for Adoptive Parents After Adoption of a Child	44
3.8	Adoptive Parents—Percentage of Covered Employers Already Meeting Major Statutory Requirements Regarding Leave for Adoptive Parents After the Adoption of a Child—By State	45
3.9	Biological Mothers—Percentage of Covered Employers Already Meeting All Major Requirements of Proposed Federal Law Regarding Parental Leave—By State	46
3.10	All Parents—Percentage of Covered Employers Meeting All Major Requirements of Proposed Federal Law Regarding Parental Leave—By State	47

LIST OF FIGURES

FIGURE	TITLE	PAGE
3.11	Percentage of Covered Employers Reporting Post-statute Leave Benefits Meeting Major Statutory Requirements	49
3.12	Method Most Often Used to Cover the Work of Employees on Leave Among Covered Employers with Post-statute Experience	51
3.13	Employers' Perceptions of the Impact of Parental Leave Statutes on Operating Costs—Covered Employers with Post-statute Leave Experience	53
3.14	Employers' Perceptions of the Impact of Parental Leave Statutes on Business Effectiveness—Covered Employers with Post-statute Leave Experience	55
3.15	Employers' Perceptions of Degree of Difficulty in Implementing Leave Benefits Required by Statutes	57
3.16	Predictors of the Level of Difficulty That Covered Employers Experienced Implementing the Requirements of State Parental Leave Statutes	58
3.17	Percentage of Covered Employers Reporting Changes in Health Insurance Benefits Related to Passage of State Laws	60
4.1	Biological Mothers Working for Covered Employers	64
4.2	Comparison of Pre- and Post-statute Leave-taking Among Biological Mothers Working for Covered Employers	65
4.3	Awareness of State Parental Leave Laws Among Biological Mothers Who Gave Birth When the Laws Were in Effect and Who Worked for Covered Employers	70
4.4	Comparison of Pre- and Post-statute Return to Work Among Biological Mothers Working for Covered Employers	71
4.5	Predictors of Decisions to Take Leaves and Return to the Same Job Among Biological Mothers Working for Covered Employers Before and After Enactment of State Laws	72
4.6	Comparison of Leave-taking by Biological Mothers at Different Levels of Household Income Who Worked for Covered Employers During the Post-statute Period—By Employer Size and Industry Type	74
4.7	Comparison of Pre- and Post-statute Leave-taking Among Biological Fathers Working for Employers Covered by Parental Leave Laws	77

EXECUTIVE SUMMARY

The introduction of parental leave before the U.S. Congress in 1985 triggered a national debate that became especially pronounced when federal legislation was passed but then vetoed by President Bush in 1990, and again when leave bills were reintroduced in both chambers of Congress in 1991. The difference of opinion has revolved around the question of whether legislated parental leave would have a positive or negative impact on business and parent employees. The purpose of *The State Parental Leave Study,** conducted by the Families and Work Institute and begun in 1988, was to identify the major issues in this debate and to use the natural experiment occurring in the states—the passage of state parental leave laws—to obtain a look at the ways state legislation, very soon after its passage, was affecting both employees and employers.

Four states were selected for this study: Minnesota, Oregon, Rhode Island, and Wisconsin. These states were chosen because their leave policies differ on several important aspects related to the policy debate. Two of the states provide leaves of 6 weeks (Minnesota and Wisconsin), while the other two states have longer leaves of 12 weeks (Oregon) and 13 weeks (Rhode Island). Minnesota exempts employers with fewer than 21 employees, Oregon exempts employers with fewer than 25 employees, and both Rhode Island and Wisconsin exempt employers with fewer than 50 employees. Rhode Island and Wisconsin require those employers that provide health insurance to continue their contribution during the leave period. In addition, Rhode Island is one of only five states nationwide that has passed legislation requiring a temporary disability insurance (TDI) plan. In Rhode Island, TDI premiums are paid by employees through payroll deductions unless employers opt to cover part or all of the cost as a fringe benefit. TDI payments provide partial wage replacement during leaves for short-term disability, including maternity.

The State Parental Leave Study was designed in a unique way. In each of the selected states, the Governor or Lieutenant Governor serving as the study's state sponsor worked with the Families and Work Institute to convene a State Advisory Panel that brought together individuals representing both sides of the parental leave legislation debate. The purpose of convening this group of individuals with diverse viewpoints on the issue was to raise the most pertinent public policy questions for *The State Parental Leave Study* to address. State Advisory Panel members were then invited to review and comment on the questionnaires developed by the Families and

---

* Although the bills in many of the states and the proposed Congressional bills also include leave for personal and family illness, this study has focused on leave for birth or adoption.

Work Institute. The methodology, design, and findings of the study were also reviewed by a Panel of National Experts.

In each of the states, parent samples were obtained of approximately 1,000 biological mothers whose children were born 3 to 9 months before enactment of the state parental leave law and 1,000 biological mothers whose children were born 6 to 12 months after enactment. Response rates ranged from 47 to 68 percent for the pre-statute samples and from 45 to 79 percent for the post-statute samples. The employer samples, consisting of 1,000 to 1,500 employers per state, were selected from the employer rolls of the state agency responsible for maintaining official databases for unemployment insurance records. Employers were surveyed approximately 2 to 3 years after the passage of their state laws. Employer response rates ranged from 30 to 40 percent. Since the response rate was somewhat low, an analysis was conducted for two states to determine whether those employers that did not complete the questionnaire differed from the employers that did respond in terms of location, industry, or size. No statistically significant differences were found, suggesting that respondents were representative of all employers in the states.

Major Findings from The State Parental Leave Study

IMPACT OF PARENTAL LEAVE LEGISLATION ON EMPLOYERS

Implementation of state leave legislation was easy for the vast majority of employers 2 to 3 years after its passage.

Before their passage there was a great deal of debate about how difficult it would be for companies to comply with the new laws. Only 9 percent of the employers in the four states found implementation difficult; 91 percent did not have problems with implementation. In fact, 39 percent found it extremely easy.

It is possible that so few companies had a hard time complying with the laws because many had already developed policies and practices that were not far out of "sync" with what these parental leave laws required. For example, 83 percent of employers in the four states reported that they had provided job-guaranteed leaves to biological mothers before the passage of the laws. Of the 60 percent that provided health insurance, 67 percent continued their employer contribution during the leave period. Those employers that set time limits on the length of disability leave before enactment provided 11 weeks of leave on average.

While many employers made various components of leave available to new parents before enactment of the laws, far fewer offered the full *package* of leave benefits required by the laws and 13 percent of employers allowed less than the medically recommended minimum of 6 weeks. Although written leave policies are not required by law, it is significant that only 25 percent of the employers had them during the pre-statute period. The remaining 75 percent left leave arrangements to be negotiated between individual employees and their supervisors.

The majority of covered employers did not report substantial costs resulting from parental leave legislation.

The majority of employers reported "no increase" in costs for training (71 percent), administration (55 percent), or unemployment insurance (81 percent) related to compliance with leave statutes, and only a small minority reported "significant" cost increases in training (4 percent), administration (6 percent), or unemployment insurance (2 percent). Larger proportions perceived "some" increase—training (26 percent), administration (39 percent), and unemployment insurance (17 percent). Regarding health insurance, 27 percent of employers reported "some" increase; 73 percent, no increase.

Further analysis suggested that employers' perceptions of increased costs reflected, in part, general cost increases, especially in health insurance, rather than new costs created by the passage of parental leave laws.

The vast majority of employers did not cut back on health insurance benefits as a result of parental leave laws.

It has been suggested that employers might reduce health insurance benefits to offset new costs associated with parental leave. However, only 6 percent of employers reported reducing health insurance benefit levels in response to parental leave laws, while 85 percent reported no change and 8 percent stated they had actually increased benefits. Interestingly, employers in Rhode Island and Wisconsin*—the only states requiring continuation of employer contributions to health insurance plans during leave—were least likely to reduce benefit levels.

Relatively few employers relied on temporary workers to replace employees on leave.

The most frequent method of handling the work of the employee on leave in the four states was to assign work temporarily to another employee. Sixty-seven percent of covered employers used this method "most often," while only 23 percent brought in outside temporary employees "most often." There was no difference between smaller and larger employers with respect to the main method used for covering leaves.

Small companies did not have more difficulty in complying with the leave laws than did larger ones, nor were they more likely to report increased costs.

Within the size range covered by laws in the four states (21 or more employees in Minnesota, 25 or more in Oregon, and 50 or more in Rhode Island and Wisconsin), company size was not related to reported difficulty implementing the parental leave benefits required by law. Moreover, smaller companies (21 to 49 employees) were no more, or less, likely than larger companies (50 to 99, and 100 or more employees) to report increased costs related to compliance with state laws.

IMPACT OF PARENTAL LEAVE LEGISLATION ON PARENT EMPLOYEES

Possibly another reason that employers did not have trouble complying with the new laws is that there was little change in the way most mothers took parental leave before and soon after the enactment of leave legislation.

---

* In Wisconsin, employers may require employees to deposit the full premium for 8 weeks of coverage into an interest-bearing escrow account. In Rhode Island, employees must pay the full premium into an escrow account while on leave. The employer is to return this payment within 10 days of the employee's return to work.

The proportion of biological mothers taking leave showed no increase 6 to 12 months after the state laws were enacted: 78.6 percent took leaves before enactment and 78.4 percent after enactment. Furthermore, there was no change in the proportion of women who were apparently denied leaves before and after passage of the laws (less than 4 percent at most). Nor did the amount of leave taken by biological mothers change: 12.6 weeks before the legislation, 12.1 weeks after it. This is more time off than the laws specified in three of the four states.

It is likely that little change has occurred because most mothers cannot afford to take more time off without some protection against loss of income. One out of five mothers reported wanting to take more time off. The major reason given for returning to work was economic necessity.

Another possible explanation of the lack of impact on biological mothers is that only 54 percent of mothers were aware of the new laws providing parental leave. Lower-income mothers were much less likely to be aware of their rights under the new laws than higher-income mothers.

After enactment, there was a trend toward fewer women taking fewer than the medically advised minimum of 6 weeks off after childbirth.

One of the more interesting trends observed soon after passage of the parental leave legislation was that a smaller proportion of women took fewer than 6 weeks off to recover physically from childbirth. Perhaps as more women become aware of the parental leave laws, fewer still will return to work before it is medically advised or before they feel ready to leave their new babies.

Women from lower-income households took less time off from work after childbirth.

Women from lower-income households took shorter leaves on average than more affluent women and were more likely to take fewer than the medically recommended 6 weeks of leave to recuperate from childbirth. Among women from households with annual gross income less than $10,000 prior to childbirth, the average amount of leave taken after childbirth was 9.5 weeks and 21 percent took fewer than 6 weeks off. In contrast, among women with household incomes of $60,000 or more before childbirth, the average amount of leave taken was 13.8 weeks and only 7 percent took fewer than 6 weeks off. Women in middle-income households took leaves that fell between these extremes. Helping to explain these findings is the fact that women in the lowest income households were also much less likely (41 percent) to have any income during the leave period related to their jobs or from temporary disability insurance than women in the highest income households (81 percent).

Women—especially lower-income women—in Rhode Island, a state requiring temporary disability insurance (TDI) that provides some wage replacement during leave, were least likely to take fewer than 6 weeks, both before and after the passage of legislation.*

Before the statute was passed, only 7 percent of Rhode Island mothers took fewer than 6 weeks off, compared to 18 percent in Oregon and 9 percent in both Minnesota and Wisconsin. After passage of the state laws, this rate fell to 2 percent in Rhode Island, compared to 19 percent in Oregon, 6 percent in Wisconsin, and 4 percent in Minnesota.

One of the most important findings of this study concerns lower-income women in Rhode Island. In this state, no lower-income women (household incomes under $20,000) took fewer than 6 weeks off after childbirth after the enactment of legislation, compared with 19 percent of lower-income women who took fewer than 6 weeks in the other three states. In addition, lower-income women in Rhode Island took longer leaves (13 weeks on average) than lower-income women in the other states (9.4 weeks on average).

Although the Rhode Island statute granted the most generous leave (13 weeks), this does not account for the magnitude of the difference, nor can it account for the fact that Rhode Island mothers took significantly longer leaves *before* the parental leave statute was enacted. The obvious explanation is that Rhode Island, through its temporary disability plan enacted in 1942, in effect grants a paid disability leave to most workers. TDI seems to reduce the disparity in leave-taking between lower-income and higher-income women.

85 percent of biological mothers returned to work to the same employers after their leaves, both before and after passage of parental leave laws.

---

* In 1991, Rhode Island TDI payment is calculated at 1 percent of employee's gross earnings up to a maximum of $25,300. Thus, the most an employee could contribute is $253.00 per year. The average Rhode Island employee contributes $198.12 per year ($3.81 per week).

The proportion of biological mothers in the combined four-state sample who returned to the same employer after their leaves was 85 percent before and after passage of state parental leave laws.

Mothers were more likely to return to their jobs when they earned more per hour, when they placed a higher value on paid employment, and when their families were more dependent on their earnings. The more family-friendly the workplace, the more likely the mothers were to return.

Following enactment of parental leave statutes, more fathers took time off and they were more likely to use unpaid leave policies to do so.

The proportion of men working for covered employers who took leaves increased significantly, from 70 percent before passage of the laws to 75 percent afterward. Although the large majority of fathers taking leaves used company policies for paid time off (paid vacation days or sick days), the proportion using unpaid parental leave rose significantly from 19 to 22 percent. While not statistically significant, the number of work days fathers took off also increased from 3.7 to 4.7 days—nearly an entire work week on average.

IMPACT OF THE PROPOSED FEDERAL LEGISLATION

Only one in seven employers in the four states had pre-statute policies and practices that would meet the requirements of the proposed federal leave legislation.

In terms of their parental leave provisions, the proposed bills in the U.S. Congress require employers with more than 50 employees to provide 12 weeks of job-guaranteed leave to biological mothers, biological fathers, and adoptive parents, with continuation of pre-existing health insurance benefits. Fifty percent of employers with more than 50 employees in the four states had pre-statute practices and policies* meeting the federal bill's requirements for biological mothers. Because fathers and adoptive parents had less access to leaves in these states during the pre-statute period, compliance with proposed federal standards dropped dramatically when leave benefits for fathers and adoptive parents were added to the analyses. Overall, only

---

* Pre-statute policies and practices were used in this analysis in order to indicate the possible impact on employers in states that have not enacted parental leave legislation. It is, of course, unclear the extent to which other states' policies and practices differ with those in Minnesota, Oregon, Rhode Island, and Wisconsin.

14 percent of employers (one in seven) in the four states had pre-statute policies and practices that conformed to the proposed federal bill's coverage for *all* parents—biological mothers and fathers as well as adoptive parents.

While the findings from this study reveal that many women were able to negotiate acceptable leaves even before the enactment of state parental leave laws, the passage of federal legislation would bring policy more in line with what actually occurs and protect those employees unable to negotiate leaves on their own.

CONCLUSION

Statutes like the unpaid parental leave laws in the four states have the effect of institutionalizing employers' leave practices by specifying a certain number of weeks of leave and providing job guarantees. This study shows that the most immediate *effect* of the passage of parental leave laws seems to be a small reduction in the proportion of women who take fewer than 6 weeks off after childbirth (less than the medically recommended length) and a small increase in the proportion of fathers who take leaves. Given the minimal difficulty in compliance and the lack of significant costs for the majority of employers, the passage of federal parental leave laws would present few operational problems for the vast majority of employers. Nor would it lead to significantly increased costs for employers.

Of utmost importance for parents is the eventual combination of parental leave legislation with temporary disability insurance so that families at all economic levels can afford to take time off to care for their children.

INTRODUCTION

For many years, the assumption in America has been that the responsibility for providing leaves of absence from work for personal and family reasons belongs to the individual employer. Governmental intervention was viewed not only as unnecessary and inappropriate, but also likely to jeopardize the profitability of the company.

As the number of working mothers began to increase rapidly in the 1960s, this issue became the subject of litigation. Women workers began to seek equal treatment in the workplace by arguing that this right was guaranteed under the Equal Protection Clause of the U.S. Constitution and Title VII of the Civil Rights Act of 1964.

In 1978, the Pregnancy Discrimination Act (PDA) amending Title VII of the Civil Rights Act was signed into law. The PDA declared it illegal to discriminate on the basis of pregnancy or childbirth in hiring, reinstatement, termination, disability benefits, sick leave, medical benefits, seniority, and other conditions of employment.

While passage of the PDA expanded health insurance and temporary disability insurance coverage to include pregnancy and childbirth, it had limited impact on leave benefits for maternity. Employers were not required to provide either paid or unpaid disability leave benefits for their employees; rather they were merely to treat disability related to maternity in the same way they treated other disabilities. Thus, employers that did not offer extended leave benefits for other disabling conditions were not required to do so for maternity.

The recognition of the PDA's limitations, coupled with the fact that women with infants and toddlers have become the fastest growing segment of the labor force, has prompted some policymakers to press for a larger federal role. In the spring of 1985, Representative Patricia Schroeder (D–Colorado) introduced H. R. 2020, the Parental and Disability Leave Act of 1985. This bill would have required that employees be granted: 1) parental leave for the birth, adoption, or serious illness of a child, and 2) medical leave for personal illness.

Since 1985, several other leave bills have been introduced in Congress. In 1990, family and medical leave legislation was passed by Congress but vetoed by President Bush. New bills have been introduced in 1991. The debate about the impact that legislated leave would have on the business community and on working parents has been, and continues to be, heated.

The State Parental Leave Study was designed to identify major issues in the debate about parental leave* and to use the natural experiment in the states—the enactment of state parental leave legislation—to obtain reliable data about the impact of parental leave legislation on employers and employees.

---

* Although many of the bills in the states as well as in Congress include family and medical leave, this study focuses only on the parental leave aspect of the debate.

CHAPTER I: THE DEBATE UNTIL NOW

THE IMPACT ON BUSINESS

The debate over the impact of legislated leave on the business community has elicited several major areas of disagreement:

- the willingness of business to provide leave without legislation—that is, the extent of coverage already provided by companies, especially small companies;
- coverage available to and needed by fathers and adoptive parents;
- the costs that statutes would impose on employers;
- the impact of statutes on the economic viability of business, especially small businesses; and
- the ease or difficulty of implementing parental leave laws.

In some of these areas of disagreement, research data have been collected; in others, the debate has centered on speculation and assumption rather than on reliable data.

Extent of Coverage

One of the major points of disagreement has been the extent to which women already have access to job-guaranteed leaves. On one side, it is argued that the business community has been responsive to the needs of mothers for time off after childbirth, thereby making legislation unnecessary. Others claim that a sizeable number of women have no such guarantees. For them, access to leave is largely subject to the discretion of employers and supervisors and in these circumstances some women presumably may receive an inadequate amount of time off.

Several questionnaires have been conducted of employers' policies, shedding some light on this issue. A 1989–1990 study by the Families and Work Institute of 188 very large* FORTUNE 1000 companies across 30 industries indicated that all provide paid disability job-guaranteed leave with some wage replacement.[1] The Conference Board conducted a questionnaire in 1988 of senior human resources executives, sampling 521 mainly large companies.** This questionnaire found that 82 percent of the firms with standard disability leave offered disability leave with some wage replacement and 11 percent offered unpaid disability leave.[2] A 1989 questionnaire of medium and large firms* conducted by the Bureau of Labor Statistics (BLS) found that 41 percent of full-time female employees in these companies were covered by maternity leave policies.[3]

---

* The median size of companies in this questionnaire is 26,800 employees. Less than 10 percent of the companies surveyed have fewer than 5,000 U.S. employees and 30 percent employ at least 50,000 employees.

** The median size of companies in this questionnaire was 3,000 employees.

A recent questionnaire of firms of all sizes conducted for the U.S. Small Business Administration (SBA) found that between 74 percent of the smallest businesses (1 to 15 employees) and 88 percent of larger businesses (over 500 employees) have some unpaid sick leave plans. Virtually all are of variable or unspecified lengths.[4] Furthermore, few small employers give job guarantees or continue health insurance benefits, as shown in Figure 1.1. Access to paid disability leaves for childbearing thus diminishes dramatically as company size decreases. Formal policies and plans were the focus of many of these studies, leaving the question of how companies handle leaves, in practice, largely unanswered.

Figure 1.1

Leave with Benefits and Guarantees Incidence

— By Type of Leave and Firm Size —

	Firm Size by Number of Employees (Number of Managers)			
	1–15	16–49	50–99	100 or more
	(N=1025)	(N=311)	(N=75)	(N=184)
Paid Sick Leave				
Job guarantee	24.6%	47.6%	59.2%	62.5%
Seniority guarantee	19.4%	30.2%	45.3%	45.3%
Employer continues to contribute to health plan	20.7%	38.2%	52.0%	41.9%
Unpaid Sick Leave				
Job guarantee	39.6%	62.2%	69.7%	64.3%
Seniority guarantee	30.1%	38.7%	52.6%	44.8%
Employer continues to contribute to health plan	26.2%	47.2%	61.8%	43.7%
Separate Maternity Leave				
Job guarantee	4.7%	12.7%	19.7%	16.8%
Seniority guarantee	4.1%	7.8%	13.3%	10.9%
Employer continues to contribute to health plan	3.8%	11.2%	15.8%	11.4%

Source: U.S. Small Business Administration (1990), Table C.1

---

* The Bureau of Labor Statistics surveyed approximately 2,000 private sector companies employing 100 or more employees.

Widely varying figures have been found for the provision of time off for biological mothers *beyond* the disability period. The Families and Work Institute found that 28 percent of the very large companies surveyed had post-disability parental or child care leave policies. For the most part, these leave policies were formal.[5] By contrast, the Conference Board study discovered that 60 percent of the surveyed firms (which included large companies) offered biological mothers up to 11 weeks of unpaid leave beyond the standard disability period.[6] The Bureau of Labor Statistics' figure was closer to that of the Families and Work Institute—20 percent of large and mid-sized firms offered post-disability leave.[7] The SBA study found that 2 percent of the smallest firms (1 to 15 employees) and 7 percent of firms with over 100 employees have post-disability leaves.[8]

Since it is clear that many women employees must negotiate for leaves, especially for leaves beyond the disability period, the debate has focused on whether the number of employers offering job-guaranteed leaves is expected to increase without legislation. Opponents of legislated leave expect an increase to occur. In testimony before the U.S. Senate in 1987, a business representative stated in opposition to a proposed federal bill that:

> *Clearly there is a growing momentum for work-family initiatives, and as this momentum gathers power, other companies will offer similar or alternative benefits in order to compete successfully for workers.*

The data do indicate that an increase in work-family initiatives is occurring. According to the Bureau of Labor Statistics, 33 percent of employers with more than 100 employees provided maternity leave in 1988; in 1989, that figure had increased to 39 percent.[9] Advocates, however, have argued that this is a very small change.

Small Employer Exemption

A second point of debate has focused on small firms. There has been a serious concern that legislated leave would impose hardships on small employers. In hearings both in Washington, D.C., and in state capitals, representatives of smaller firms have argued that small companies should be exempt from government requirements. As one business representative asserted in congressional testimony, "If you think it is easy to be competitive and make a profit—well, you should try it sometime." Another stated that "small business employers need to have the *flexibility* to provide the benefits that best suit their employees."

Much of the discussion has centered on the threshold level that should exempt companies from compliance. At various times, proposals have suggested threshold levels of 100, 50, 25, and 21 employees. Proponents of leave legislation have been concerned that if the threshold level is too high, considerable numbers of American employees will not be covered. Figure 1.2 delineates these breakdowns.

Figure 1.2
Effects of Different Employer Size Exemptions

Size of Exemption	% Employers Excluded	% Employees Excluded
Less than 10	76%	29%
Less than 15	82%	29%
Less than 20	88%	53%
Less than 35*	92%	57%
Less than 50	95%	60%

Based on Census Bureau data, from County Business Patterns (1984).
*Calculations are extrapolations from available data.
Calculations provided by the GAO take into account the requirement of one year on the job and at least 900 hours employment.
Source: *Senate Subcommittee on Children, Families, Drugs and Alcoholism; Committee on Labor and Human Resources*

While the *number* of employees who would be excluded from coverage has been computed for varying exemption levels, little can be known about the *actual* impact different exemption levels would have on business without examining the degree to which employers of differing sizes have current practices (as opposed to policies) that comply with the requirements. Unfortunately, since such analyses were lacking, much of the debate on this issue has been fueled by speculation rather than by actual evidence.

Implications of Providing Leave for Fathers

Some opponents of leave legislation view paternity leave as a side issue, assuming that very few fathers would take parental leaves. They base their assumption on the fact that even when companies have parental leave policies available for men to use, few men take advantage of them.

A 1983 study by Catalyst revealed some of the managerial pressures on men not to take leaves. While 37 percent (114) of the 384 large companies surveyed indicated that they offered unpaid leaves to parents on a gender-neutral basis, men were not truly free to use these policies.

For example, in surveying managers of the companies with gender-neutral leave policies about how much time off fathers *should* be given at childbirth or adoption, Catalyst found that 41 percent of the managers asserted that *no* amount of time was "reasonable" for fathers to take off. Seventeen percent of the managers said that a maximum of 2 weeks was a "reasonable amount of time."[10]

It is thus not surprising that Catalyst's follow-up focus groups and interviews revealed that few men had used the leave options. Only nine of the 114 companies offering a leave reported that fathers had taken advantage of it and, in these cases, only one or two fathers had actually done so.[11]

In addition, when the *Wall Street Journal* recently contacted several companies offering paternity leave, the companies reported that few new fathers had taken advantage of this policy. For example, no employee had taken the three-month unpaid paternity leave at Campbell Soup Company in the 3 years the firm had offered this benefit.[12]

Other opponents to leave legislation are less certain that the status quo will remain. They note that in countries like Sweden where fathers' use of the one-year* parental leave insurance policy began at 3 percent a few years after the law was passed in 1974, the rates have been steadily increasing over the past 10 years. Twenty-three percent of Swedish fathers whose children were born in 1986 took a parental leave during the child's first year.[13]

In addition, they note that an increase in men's family involvement is signalled by men's share of family work in America having increased from 20 to 30 percent.[14] They are concerned about a future in which significant numbers of men will spend time away from work caring for family members and perhaps threatening U.S. business productivity.

Advocates for legislated leave take a different stand. They applaud the increasing involvement of men as parents. Concerned that low rates of parental leave usage may be caused by pressures on men not to be involved in family life, they see the passage of parental leave legislation as a clear sign to men that they may begin to request time off to be with their families after the birth or adoption of a child.

---

* Sweden's parental insurance policy has been recently changed. The new policy entitles new parents to a 15-month job-guaranteed leave, which can be divided between them. Jobs in the public sector are fully reimbursed for the first 9 months, while jobs in the private sector are reimbursed 90 percent [of gross pay] by social insurance funds and 10 percent by employer funds. The wage replacement is capped at 209,250 SEK ($34,944.75 as of April 17, 1991). Parents can also opt to take a half-time leave until the child is 2 years old at half of this compensation. Finally, parents are entitled to stay at home for an additional 3 months at a fixed rate of 65 SEK per day ($10.85).

Indeed, at companies with explicit parental leave policies for fathers and with executives who encourage men to use these policies, men are beginning to take advantage of them. At Eastman Kodak Company, 61 men out of 967 employees have used the company's Family Leave Program. Family leave at Eastman Kodak is a gender-neutral policy allowing up to 17 weeks of unpaid job-guaranteed leave for birth, adoption, or assuming the responsibility for a foster child, as well as serious family illness. Sixty-two percent of the 61 male employees using the leave took it after the birth or adoption of a child, and 30 percent took it for a family illness.[15]

Not surprisingly, studies of the prevalence of leave for men find that far fewer fathers than mothers are permitted time off following childbirth or adoption. Kamerman, Kahn and Kingston surveyed 250 large companies between 1980 and 1981 and found that only one-quarter of the firms permitted new fathers to take time off for child care responsibilities. These policies generally amounted to only a few days and usually were part of accrued sick leave. Only two of the firms studied actually permitted paid paternity leaves—each for only 3 or 4 days.[16]

In the 1989 BLS questionnaire including medium and large companies, only 20 percent of all male employees were covered by explicit leave policies that included fathers, a small increase from the 17 percent found in a similar 1988 questionnaire.[17] The Families and Work Institute study of very large companies revealed that 22 percent have parental leave that includes fathers.[18] Other studies put the figures at 44 percent,[19] 46 percent,[20] and 27 percent.[21]

Because these studies have concentrated on large and mid-sized companies, little reliable information exists about whether U.S. employers of all sizes explicitly permit fathers to take time off for parental leave. Additional data are needed to illuminate this debate.

Implications of Providing Leaves for Adoptive Parents

Those who oppose leave legislation have focused on leave in general rather than leave for adoptive parents. Relatively speaking, only a small number of parents adopt each year. According to the U.S. Census, there were approximately 51,157 adoptions by unrelated individuals in the United States in 1986.[22]

Proponents of legislated leave emphasize that since few leave policies specifically include adoptive parents, they may be denied coverage. The Families and Work Institute study of very large companies found that 23 percent of the companies surveyed offered leaves to adoptive parents.[23] The Conference Board study found a higher incidence—46 percent of the firms in its questionnaire offered leave for adoptive parents.[24] Again, more reliable data on the extent of coverage for adoptive parents are needed.

The Cost of Parental Leave Due to Use of Temporary Workers

There has been a strong concern that compliance with parental leave statutes would be too costly. Much of the congressional testimony has centered on these points:

> *The probable costs of this legislation will be considerable and certainly more than its proponents claim. In a time of continuing competitiveness difficulties and an enormous trade deficit, Congress has the responsibility to enact laws which create a positive economic climate, not laws with uncertain benefits which will further burden American businesses and reduce job growth in this country.*
>
> Minority view of H.R. 770
> Report on the Family and Medical Leave Act of 1989

> *We would hope that you would understand that while many employers may be in a position currently to provide such benefits, many others simply could not and, if required, would suffer severe operational difficulties and financial hardship. When that occurs, the interests of all of the employees of that employer are going to suffer.*
>
> President of Trade Association, Annapolis, Maryland
> Senate Hearing, 1987

> *Mandated benefits are not cost-free. When mandated benefits are added to the cost of doing business, they will be passed on to the consumer wherever possible.*
>
> Representative from the U.S. Chamber of Commerce
> Senate Hearing, 1987

Estimates of cost have been calculated, but they have differed depending on the length of leave, the number of employers covered—the exemption level, and the extent to which it is assumed that temporary replacements would be used. Assuming that all eligible employees would take leave, would use the allotted time off, and would be replaced by temporary workers, the U.S. Chamber of Commerce estimated a cost of $2.6 billion. If lower usage of temporary workers is assumed, as the General Accounting Office (GAO) found in its study of 80 small, medium, and large firms, the cost would decrease.[25] For a proposed federal law that would exempt employers with fewer than 50 employees, and allowed for 10 weeks of family leave and 13 weeks of medical leave, the GAO calculated a cost of $188 million in 1989, with the major cost coming from continuing the employer contribution to health insurance plans rather than from the use of temporary workers.[26]

Several studies have examined the use of outside temporary workers in replacing employees on leave. In the SBA study, 60 percent of the smallest employers (1 to 15 employees) and 80 percent of all other firms (over 15 employees) rerouted the work of managers on leave, while between 23 percent of the smallest firms and 8 percent of mid-sized firms (16 to 99 employees) hired temporary replacements for managers. When the employee on leave in the study was non-management, 70 percent of companies rerouted work; between 44 percent of small companies and 70 percent of the larger firms (over 100 employees) also brought in temporary workers to replace non-managers.

The SBA study calculated the cost of leaves and discovered that the cost of giving unpaid leave to an employee was relatively small if the savings in *not* paying the employee's salary were taken into account: "The cost of such coverage differs little from the cost of maintaining the workers in their position without leave." Providing leave was cheaper than letting the employees quit and hiring permanent replacements.[27]

Costs Associated with Training, Administration, Unemployment Insurance, and Health Insurance

Four areas of additional concern about the costs of parental leave have been identified: training, administration, unemployment insurance, and health insurance. Most of this concern has focused on small businesses. As a representative of a trade association stated in 1989:

> *The absence of even one employee in a small business can disrupt a company's operation... In addition to disrupting business operations, the costs and administrative burdens of continuing health benefits, as well as financing and training temporary replacements, would disproportionately affect small employers who typically operate on a low-profit margin. Any mandate that increases payroll costs will inhibit a small business's ability to survive.*
>
> Statement of International Sanitary Supply Association, 1989

The SBA study asked employers to provide their "best estimate" of the cost of the most recent leave, including the value of lost output and lost sales in addition to labor costs. The study found that in companies with fewer than 100 employees, the net cost—the cost of covering leave-takers' work, minus her or his salary (excluding continuing health insurance)—was $22.00 a week per employee. In larger firms, it was $90.00 per week. Continuing health care insurance added $32.00 per week. Contrary to expectation, the cost per employee was found to be lower in small companies.[28] The passage of state parental leave statutes affords an opportunity to clarify this debate further.

Cutbacks in Employer-Provided Benefits

There has been concern among opponents of leave legislation that because of the cost of providing leaves, employers would cut back other benefits.

> *Any single mandated benefit will be likely to lead to a reduction in other—sometimes more preferred—employee benefits. A mandatory benefit, regardless of how worthy, does not increase the employee benefits "pie." It merely divides it in a manner dictated by a powerful special interest group or a number of special interest groups.*
>
> Small business owner representing the Chamber of Commerce
> Senate Hearing, 1987

> *Clearly it is unfair to mandate that a benefit plan for a 55-year-old woman or a 20-year-old single male, for example, contain a parental leave provision when such a mandate might well preclude the offering of benefits, such as paid prescription drugs or dental care, which could be more important to that employee.*
>
> National Federation of Independent Business
> Senate Hearing, 1989

To counter these claims, a few small and mid-size business owners have testified that providing leaves has not meant cutbacks in other benefits.

> *Our leave policy in no way has resulted in cutbacks in employee benefits. In fact our record will show our company has continuously expanded benefits to our employees.*
>
> Vice President, Industrial Relations, FEL-PRO
> September 1988

The passage of state leave legislation provides an opportunity to ascertain whether or not employees have had to forego other benefits after leave statutes were enacted.

Retention

Advocates of leave legislation argue that the provision of better leave policies will improve retention. They are supported in their argument by the research to date. One study of a firm with a year-long leave had a 94 percent return rate.[29] Another study found that employees were much more likely to return to companies with family-friendly policies and practices, including parental leave, than they were to return to non-accommodating companies: 78 percent returned to accommodating companies versus 52 percent to non-accommodating companies.[30]

It is not clear whether leave legislation would affect retention rates. Is it the policies that affect retention or the supportive accommodating environment, or both? Such questions can be investigated in a study of state leave legislation.

Ease or Difficulty of Implementation

There are differences of opinion about the perceived ease or difficulty of implementation. Some regard these mandates as extremely difficult to implement, while others have assumed that since companies regularly deal with employees on disability and parental leave, the legislative requirements would not be an undue burden. Since the debate has been largely theoretical thus far, the passage of state parental leave legislation provides the opportunity to probe this question.

THE IMPACT ON PARENT EMPLOYEES

Usage of Leave

Those who oppose parental leave legislation have been concerned that leave legislation will increase usage rates. Not only will more employees take leaves, but they will take longer leaves, creating greater costs for businesses.

Denial of Leaves

Proponents of parental leave legislation have argued that some women are denied leaves and are thus forced to quit or resign from their jobs.

Although no nationally representative studies have explored this issue to date, the *Mothers in the Workplace* study, conducted by the National Council of Jewish Women (NCJW), provides the best information to date. This study had a large sample—2,620 women before childbirth and 1,916 four to seven months afterward, in 80 communities. It found that less than 2 percent of mothers were denied leaves.[31] Although this is a very small number in absolute terms, proponents of leave legislation argue that, if such legislation were passed, no one would be fired because of childbirth. Aware that some managers may use childbirth as a reason to get rid of a poorly performing employee, they contend that management problems should be handled as management problems—poorly performing employees should be fired on the basis of their job evaluations, not because of childbirth.

Shorter Leaves

Another concern of advocates is that without the protection of leave legislation, many women may be forced to take shorter leaves than they would like.

The NCJW study found that the average length of leaves for childbirth was 11.7 weeks, with approximately 2 weeks taken prior to delivery and 9 weeks afterwards. Forty-two percent of the women in the sample took the amount of leave they had planned (an average of 11.4 weeks); 17 percent took more time than planned, usually because of health complications or wanting more time with their babies (14.2 weeks on average); and 41 percent took less time than planned (10.6 weeks on average). The reason most frequently given for an earlier than anticipated return was economic necessity.[32]

Since the NCJW study sample is not fully representative, the question of how many women are forced to come back earlier than they wish remains unanswered.

Coverage for Lower-Income Families

Opponents argue that because proposed legislation provides unpaid leave, it will only benefit women who can afford to take time off without compensation.

> *It would be safe to assume that the only people who would be financially secure enough to take this leave would be two-income, upwardly mobile couples. This could be why several people have dubbed this legislation "the yuppie bill."*
>
> U.S. Chamber of Commerce
> Senate Testimony, 1987

Those advocating legislation, on the other hand, point out that lower-income women are even more in need of job security when they are forced by medical circumstances to take leave during and after pregnancy. The Institute for Women's Policy Research found that lower-income women were less likely to have job-protected leaves for birth.[33] Furthermore, the NCJW study found that lower-income women were less likely to take time off beyond the period of physical disability.[34]

Usage by Fathers

There has been mixed concern about fathers in the parental leave debate. As previously discussed, the experience of companies that provide parental leave policies for fathers indicates that few fathers use these policies unless explicitly encouraged to do so. This appearance may be deceptive though, as several small community-based studies indicate that fathers may not seem to take time off at childbirth or adoption because they don't use parental leave policies.

Surveys by Joseph Pleck of 41 new fathers in 1988 and 49 in 1990 found that 93 percent of the new fathers in 1988 took time off from work (6.6 days on average) after the birth of their last child and 74 percent did so in 1990 (6.4 days on average). Rather than using parental leave policies, the men in both of these studies took time off by using their accrued sick and vacation time, or they took an informal paid leave with permission from their supervisors.[35]

Since there are no national data on this subject, the parental leave debate raises a number of policy questions:

- To what extent do men take time off?
- How much time do they take?
- Do they use unpaid leave policies or, as the small studies indicate, find ways to take time off with pay?

Finally, questions arise about the impact of leave legislation:

- Will an increasing number of men take time off when leave legislation is enacted?
- Will they take more time off?
- Will they use unpaid leave policies to a greater extent than they do now?

Men's Activities on Leave

One aspect of parental leave for new fathers that has engendered considerable debate on the state level is how men spend their time while on leave. In testimony prior to the passage of state legislation, some warned of the opportunity for abuse, asserting that men would use leaves for recreational purposes rather than caring for the new baby, e.g., hunting, fishing, playing golf or tennis. Thus, it is important to find out how men use their time off while on leave.

CONCLUSION

On a number of issues, the debate about the impact of parental leave legislation has been plagued by an absence of data. *The State Parental Leave Study* was structured to address many of these unanswered questions.

REFERENCES

1 E. Galinsky, D. E. Friedman, and C. Hernandez, The Corporate Reference Guide to Work-Family Programs (New York: Families and Work Institute, 1991).

2 K. Christensen, Flexible Staffing and Scheduling in U.S. Corporations, Research Bulletin No. 240 (New York: The Conference Board, 1989).

3 U.S. Department of Labor, Bureau of Labor Statistics, Employee Benefits in Medium and Large Firms, 1989, Bulletin No. 2363 (Washington, D.C.: U.S. Government Printing Office, June 1990).

4 E. Trzcinski and W. T. Alpert, Leave Policies in Small Business: Findings from the U.S. Small Business Administration Employee Leave Survey (Washington, D.C.: U.S. Small Business Administration, Office of Advocacy, October 1990).

5 E. Galinsky, D. E. Friedman, and C. Hernandez, 1991.

6 K. Christensen, 1989.

7 U.S. Department of Labor, 1990.

8 E. Trzcinski and W. T. Alpert, 1990.

9 U.S. Department of Labor, 1990.

10 Catalyst, Report on a National Study of Parental Leaves (New York: Catalyst, 1986).

11 Catalyst, 1986.

12 S. Alexander, "Fears for Careers Curb Paternity Leave," The Wall Street Journal, August 24, 1990.

13 L. Haas, Equal Parenthood and Social Policy: A Study of Parental Leave in Sweden (Albany, New York: State University of New York Press, forthcoming).

In a sample of 319 couples in Gothenburg, Haas also found that 27 percent of Swedish fathers who had children born in 1984 took some parental leave during the child's first 18 months.

14 J.H. Pleck, Family-Supportive Employer Policies: Are They Relevant to Men? Paper presented at the 98th Annual Convention of the American Psychological Association, Boston, August 12, 1990.

15 E. Galinsky, D. E. Friedman, and C. Hernandez, 1991.

16 S. Kamerman, A. J. Kahn, and P. Kingston, Maternity Policies and Working Women (New York: Columbia University Press, 1986).

17 U. S. Department of Labor, 1989.

18 E. Galinsky, D. E. Friedman, and C. Hernandez,1991.

REFERENCES (CONTINUED)

[19] K. Christensen, 1989.

[20] Hewitt Associates, Work and Family Benefits Provided by Major U.S. Employers in 1990 (Lincolnshire, Illinois: Hewitt Associates, 1990).

[21] Buck Consultants, Inc., Parental Leave: An Employer View (New York: Buck Consultants, Inc., 1990).

[22] U.S. Bureau of the Census, Statistical Abstract of the United States, 1990, p. 370.

[23] E. Galinsky, D.E. Friedman, and C. Hernandez, 1991.

[24] K. Christensen, 1989.

[25] General Accounting Office's Estimate of the Costs of the Parental and Medical Leave Act of 1987 (S. 249) (GAO/T-HRD-88-5, October 29, 1987).

[26] General Accounting Office's Cost Estimate of the Family and Medical Leave Act of 1989 (H.R. 770) (GAO/T-HRD-89-4, February 7, 1989).

[27] E. Trzcinski and W. T. Alpert, 1990.

[28] E. Trzcinski and W. T. Alpert, 1990.

[29] G. L. Staines and E. Galinsky, "Parental Leave and Productivity: The Supervisor's View," to appear in Parental Leave and Productivity (New York: Families and Work Institute, to be published 1991).

[30] J. T. Bond, "The Impact of Childbearing on Employment," to appear in Parental Leave and Productivity (New York: Families and Work Institute, to be published 1991).

[31] J. T. Bond, 1991.

[32] J. T. Bond, 1991.

[33] R. M. Spalter-Roth and H. I. Hartmann, Unnecessary Losses: Cost to Americans of the Lack of Family and Medical Leave (Washington, D.C.: Institute for Women's Policy Research, 1988).

[34] J. T. Bond, 1991.

[35] J. H. Pleck, "Fathers and Parental Leave: A Perspective" (New York: Families and Work Institute, to be published 1991).

CHAPTER II: THE STATE PARENTAL LEAVE STUDY

In 1988, the Families and Work Institute received funding from the Ford Foundation to assess the effects of recently passed parental leave statutes on employers and parents in four states—Minnesota, Oregon, Rhode Island, and Wisconsin. Although one of the four states—Wisconsin—included leave to care for a sick child, parent, or spouse and medical leave for the employee, and a second state—Rhode Island—included leave for employees' own serious illness, *The State Parental Leave Study* focuses only on leave for birth and adoption. These four states were selected because they provided an opportunity to observe how major variations in statutory requirements might be related to effects on employers and employees.

Parental leave statutes in the four states differed along several dimensions that have been the subject of debate—as illustrated in Figures 2.1 and 2.2. Specifically, the states differed on the thresholds for employer exemption (21 or more employees, 25 or more employees, and 50 or more employees); on length of leave provided (6 weeks,12 weeks, and 13 weeks); and on the continuance of the employer's contribution to health insurance. In addition, one state—Rhode Island—had a pre-existing statute requiring temporary disability insurance (TDI) coverage for most employees. The state-administered TDI plan interacts with its parental leave law by providing partial wage replacement to employees during leaves for disability. Funds come from employees (through payroll deductions), although employers may choose to contribute.

Figure 2.1

Summary of Statutory Provisions

— By State, Type of Leave, Date in Effect —

	MN *Parental* (8/1/87)	OR *Parental* (1/1/88)	RI *Family* (7/1/87)	WI *Family* (4/25/88)
Size of covered employers (number of employees) by state	≥ 21	≥ 25	≥ 50	≥ 50
Length of leave (weeks)		*		**
Biological mothers	6	12	13	6
Biological fathers	6	12	13	6
Adoptive parents	6	12	13	6
Personal illness			13	2
Family illness			13	2
Employer contribution to pre-existing health benefits continued?	No	No	Yes	Yes
Comments regarding continuation of pre-existing health benefits	An employer must continue to make insurance coverage under its group rate available to an employee but can require employee to pay the entire cost.	N/A	Employer must maintain its contribution to employee's pre-existing health benefits. However, before taking leave, employee must pay employer a sum equal to the premium required to maintain employee's health benefits. Employer will return this payment to employee within 10 days after returning to job.	Employer must maintain its contribution to employee's pre-existing health benefits. If health insurance coverage is provided, the employer may require that the employee pay the full premium for 8 weeks of coverage into an interest-bearing escrow account.
Wage Replacement			Rhode Island is one of 5 states with mandated temporary disability insurance (TDI), providing partial wage replacement during disability leave.	

* In Oregon, according to the most recent enforcement decision, if at least one parent works for a covered employer, the two parents must split the 12 weeks granted by statute into non-concurrent parts, unless their employers agree to other terms.

** In Wisconsin, employees are entitled to a total of 8 weeks of family and medical leave *in addition to* any other benefits employers offer, such as sick and/or vacation leaves, as well as disability. The statute does not explicitly state whether employees can add on vacation or disability or other types of leave offered by employers in order to extend a medical or family leave longer than 6 weeks. The enforcement agency's regulation, however, explicitly allows employees to extend the leave with other accrued leave if the employee meets the employer's requirements for taking the other leave *or* if the employer consents to the extension.

Source: Families and Work Institute, 1991

Figure 2.2
Exemption Thresholds and Required Length of Leaves
— By State —

	Exemption Threshold by Number of Employees		Length of Leave Required	
State	Higher (under 50)	Lower (under 25)	Shorter (6 wks)	Longer (12-13 wks)
Minnesota		X	X	
Oregon		X		X
Rhode Island	X			X
Wisconsin	X		X	

Source: Families and Work Institute, 1991

APPROACH: STATE ADVISORY PANELS

Adversarial feelings persisted after enactment of parental leave statutes in the four states. Since so much of the argument on both sides had rested on belief, rather than knowledge, there were many unanswered questions about impact and implementation. The purpose of *The State Parental Leave Study* was to separate fact from fiction and to discern the actual impact of parental leave legislation on parents and employers. Toward that end, individuals on both sides of the debate were consulted to help frame the study questions.

The main sponsors of state parental leave legislation—Governor Goldschmidt of Oregon and Lieutenant Governors Begin of Rhode Island, Johnson of Minnesota, and McCallum of Wisconsin—were asked to sponsor the study and to identify key individuals in their states representing the diversity of opinions expressed during the leave debate. The persons identified in each state included representatives from major business groups, labor unions, women's and children's advocacy groups, state legislators from both parties, and state agencies with jurisdiction over the statutes.

These individuals were invited to meetings in each state co-hosted by state sponsors and the Families and Work Institute. State meetings had the following goals: to encourage participants to play active roles in shaping the study by serving on their state's study advisory panel; to identify the most important questions about the impact of the statutes; to gain their assistance in drafting the questionnaires that would be sent to employers and parents; and to obtain information about each state's political landscape.

The issues raised by the participants were common across state lines. Some representatives of the business community were universally concerned about the impact of parental leave statutes on the cost of doing business. Particular concern focused on the perceived burden imposed on small employers. In addition, there was concern about the perceived negative impact on other employer-provided benefits such as health and unemployment insurance. Finally, there was concern about the problems employers faced in covering the work responsibilities of employees on leave.

Proponents of the laws were curious about how much impact the statutes would, in fact, have on employees, especially on vulnerable populations of employees such as those with lower incomes or those who were single heads of households. Because the statutes were products of political compromise, participants on both sides wondered whether they had enacted the "right" statutes for the state with respect to small employers' exemptions, required length of job-guaranteed leaves, and other provisions.

PANEL OF NATIONAL EXPERTS

To ensure the rigor of the study, a panel of national experts was formed to provide additional guidance. This group consisted mainly of researchers, but also included representatives of national organizations. In addition to providing initial advice, the Panel of National Experts also guided development of the questionnaires, sampling strategies, and analysis plans. Once data analysis was completed, they also reviewed the findings.

Members of the Panel of National Experts* were Arthur Emlen, Portland State University; Sheila Kamerman, Columbia University; Joan Kuriansky, Older Women's League; Donna Lenhoff, Women's Legal Defense Fund; Joseph Pleck, Wheaton College; Linda Tarr-Whelan, Center for Policy Alternatives; Eileen Trzcinski, Cornell University; Wendy Williams, Georgetown University Law School; and a representative from a national business organization whose name is withheld by request. Heidi Hartmann from the Institute for Women's Policy Research also provided counsel.

---

* The presentation of the findings reflects the views of the authors of this report; the Panel of National Experts is not responsible for the authors' interpretations of the data.

QUESTIONNAIRE DESIGN AND METHODOLOGY

Questionnaire Development

Preliminary drafts of the questionnaires for employers and parents were developed with guidance from the Panel of National Experts and presented at the State Advisory Panel meetings for comment. Following revision, the questionnaires were reviewed by State Advisory Panels for a second time. After further revisions, the questionnaires were reviewed again by the Panel of National Experts and, based on their advice and feedback, final drafts were developed and field-tested.

Data Collection

The Families and Work Institute contracted with the Social and Economic Sciences Research Center (SESRC) at Washington State University in Pullman to manage data collection operations in the four states as well as data processing of returned questionnaires. To achieve high response rates, SESRC implemented mail questionnaires in three stages: an initial mailing, a follow-up postcard after one week, and a second mailing of the questionnaire 3 weeks after the first mailing. Because of concerns about confidentiality, actual mailings were sometimes carried out by staff of the public and private agencies that maintained employer and parent lists; however, standard SESRC procedures were followed in all cases.

Sample Identification

Every effort was made to obtain information from representative samples of employers and parents in the four states. The most complete lists of employers and parents in each state are found with two state agencies: For employers, it is the agency that maintains the official data base for unemployment insurance records; for parents, it is the agency that keeps vital records (birth certificates).

The officials in charge of these state agencies were invited to participate in the State Advisory Panel meeting. Following this meeting, the state study sponsors (Governor's and Lieutenant Governor's Offices) requested the cooperation of agency heads.

Employer Samples

In three states—Wisconsin, Rhode Island, and Oregon—the samples of 1,000 to 1,500 employers were drawn from unemployment lists. The fourth state, Minnesota, agreed to an indirect procedure whereby, to maintain the anonymity of employers, agency staff not only drew the employer sample, but also mailed questionnaires and reminders as specified in SESRC's mail questionnaire procedure. Employers were sampled 1 year and 11 months to 3 years after enactment of the laws in their states.

In order to obtain reliable estimates of major subgroups of employers, a stratified random sampling procedure was employed. With this method, cases were systematically selected from master lists of goods-producing companies and companies with large numbers of employees, and were oversampled in relation to their relatively small numbers in the population. We have no reason to believe that periodicity in the employer lists biased the samples in any way. Data were later weighted to correct for unequal probabilities of selection by industry and size. Completion rates (ratios of completed questionnaires to total number of eligible respondents) ranged from 30 to 40 percent for the employer sample.

Biological Parent Samples

Samples of biological parents consisted of two parts—approximately 1,000 biological mothers per state whose children were born between 3 and 9 months *before* enactment of state parental leave laws (the *pre-statute sample*) and approximately 1,000 mothers per state whose children were born between 6 and 12 months *after* enactment (the *post-statute sample*). These samples were systematically drawn from available lists, and the data did not require weighting. There is no reason to believe that periodicity in these lists biased the samples in any way.

In Minnesota and Oregon, samples were obtained from the state agency that maintains vital records (birth certificates). In Minnesota, state officials drew the necessary random samples and conducted all mailings related to data collection. In Oregon, because there was a state hiring freeze and because the vital records agency could not assign to an existing employee the tasks of preparing the sample and mailing out the questionnaire, a graduate student was placed with the agency to assume all responsibilities for sampling and data collection.

In Wisconsin and Rhode Island, where the agencies responsible for vital records chose not to provide the parent sample for confidentiality reasons, it was necessary to purchase mailing lists from a commercial direct mail firm. The selected firm maintains the most comprehensive list of new parents available for purchase, and frequently provides samples for research purposes.

Completion rates ranged from 47 to 68 percent for the pre-statute samples and from 45 to 79 percent for the post-statute samples. The samples of parents used for analyses were restricted to women who were employed as wage and salaried workers prior to the birth of their babies.

Adoptive Parents

An effort was also made to assess the impact of parental leave statutes on adoptive parents who received the same leave guarantees as biological parents under state laws. The largest adoption agencies in each state were contacted and invited to participate in the study. Agencies in two states—Minnesota and Rhode Island—agreed to participate and, in order to maintain confidentiality, took full responsibility for data collection. Unfortunately, the number of adoptive parents who were contacted and who responded to the questionnaire was too small to permit reliable estimates of impact. Therefore, this report does not present information obtained from adoptive parents. However, Chapter III does report on employers' leave policies and practices affecting adoptive parents.

Sample Design

The design for employer samples is presented in Figure 2.3; the design for parent samples, in Figure 2.4.

Figure 2.3
Employer Questionnaires

	Oregon ***Department of Human Resources***	**Minnesota** ***Department of Jobs and Training***	**Rhode Island** ***Department of Employment Security***	**Wisconsin** ***Department of Industry, Labor and Human Relations***
Size of sample listing	1,000	1,500	1,141	1,100
Basis for stratification	Industry, size	Industry, size	Industry, size	Industry, size
Date of first mailing	December 21, 1989	February 20, 1990	July 27, 1990	March 14, 1990
Sample size	361	588	324	385
Completion rate	36%	40%	30%	37%

Source: Families and Work Institute, 1991

Figure 2.4
Parent Questionnaires

	Oregon ***Department of Human Resources***	**Minnesota** ***Department of Health***	**Rhode Island** ***Metromail Corporation***	**Wisconsin** ***Metromail Corporation***
Size of sample listing	1,287 (pre-statute) 1,343 (post-statute)	1,000 (pre-statute) 1,000 (post-statute)	1,009 (pre-statute) 991 (post-statute)	1,000 (pre-statute) 1,000 (post-statute)
Date of statute enactment	January 1, 1988	August 1, 1987	July 1, 1987	April 25, 1988
Date of first mailing	December 21, 1989	February 20, 1990	July 27, 1990	March 14, 1990
Completion rate	55% (pre-statute) 64% (post-statute)	68% (pre-statute) 69% (post-statute)	47% (pre-statute) 45% (post-statute)	66% (pre-statute) 79% (post-statute)

Source: Families and Work Institute, 1991

Representativeness of Respondents

The aim of the study was to obtain information from "representative" groups of employers and parents. In the case of employers, samples were drawn in such a way as to ensure the representativeness of employers included in the questionnaire mailing lists. However, since only 30 to 40 percent of employers responded to the questionnaire, it was possible that the final respondent samples were not representative of the larger population of employers in each state. In order to see whether this was true, comparisons of respondents and non-respondents in Rhode Island and Wisconsin—based on location, industry, and size—were conducted. These analyses did not reveal any statistically significant differences between those who responded to the questionnaire and those who did not, providing a greater level of confidence in the employer questionnaire results.

The parent samples drawn from vital records in Minnesota and Oregon were surely representative of parents bearing children during the sampling period for these states. However, samples drawn from commercial mailing lists in Wisconsin and Rhode Island may over-represent parents of higher socioeconomic status. With regard to the representativeness of parent respondent samples, it was not possible to compare respondents and non-respondents with respect to sociodemographic characteristics, since such information was not available for non-respondents. While response rates for parent samples were generally high, parents of lower socioeconomic status may be under-represented in respondent samples due to biases in the original lists (Wisconsin and Rhode Island) and/or to commonly observed lower rates of response from persons of lower income and education.

Substudy of Enforcement

To round out the picture presented by data from employers and parents, information was collected about the efforts that states were making to implement and enforce parental leave statutes. This included monitoring grievances and complaints filed under the statute in each state.

CHAPTER III: IMPACT ON EMPLOYERS

This chapter examines the impact of state parental leave laws on employers. The first three sections of the chapter consider their effect on employers' leave policies and practices for biological mothers, biological fathers, and adoptive parents. The final section considers issues of implementation—employers' understanding of their legal obligations, approaches to covering the jobs of employees on leave, costs and burdens imposed by implementation of the leave requirements, and global assessments of how difficult or easy it has been to comply with state parental leave statutes.

LEAVE POLICY AND PRACTICE AFFECTING BIOLOGICAL MOTHERS

Although *parental leave* is used by both biological fathers and adoptive parents in order to care for their children, biological mothers are at present the most significant consumers of parental leave benefits. Women bearing children are compelled to take significant time off from work because of maternity-related disability, in addition to the time they may need and want for parenting.

The Debate

In the course of public debate about the need for governmentally imposed parental leave policy, some have argued that most employers already provide sufficient leave benefits for women having children, thereby making legislative mandates unnecessary. In contrast, others have argued that relatively few employees have guaranteed leave benefits and that significant numbers of individuals are unable to negotiate adequate leaves, or any leave at all, with their employers or supervisors.

Those opposed to parental leave legislation have also warned that mandatory leave requirements would place great hardships on employers, especially small employers, who find it difficult to cover the work responsibilities of employees on leave. In response, proponents of

---

Technical note: To ensure unbiased estimates of (descriptive) population parameters, the employer sample was weighted (as described in Chapter II) prior to analyses generating percentages and means. When absolute differences among states, in percentages or means, reached statistical significance at $p<.0001$ in these weighted analyses, differences were described in the text as "significant." Readers who take issue with hypothesis testing based on weighted sample data might still be guided by these conservative tests of statistical significance when judging the probable reliability of observed absolute differences among the states. Furthermore, multiple linear regressions were performed on unweighted sample data.

mandatory leave benefits have argued that exempting small employers, who far outnumber large employers, would leave many workers entirely unprotected. *The State Parental Leave Study* investigates these issues.

What policies and practices were in effect for biological mothers before the enactment of parental leave statutes?

Even before parental leave statutes were implemented, the majority of employers in the four states made some provision for biological mothers to take some time off after childbirth.* The percentages of employers offering leave benefits of different types are shown in Figure 3.1.

Job-guaranteed Leave for Disability Related to Maternity

Parental leave typically refers to two types of a leave of absence from one's job: a *disability leave* that is used both to care for the newborn child and to recover physically from the childbirth and a *post-disability leave* to care for the child. In this section, we discuss disability leave first, then post-disability leave.

Since parental leave is intended to provide a leave of absence from one's job, having a guarantee of the same job, or at least a comparable job, upon returning to work is essential to definition of the term. Of all employers in the study sample, 83 percent reported that they offered job-guaranteed disability leaves to biological mothers following childbirth as a function of formal policy or as a matter of practice. The proportion of employers offering job-guaranteed leaves ranged from a low of 72 percent in Oregon to a high of 88 percent in Minnesota.

---

* On the returned questionnaires there were substantial missing data for questions relating to parental leave. The overall pattern of responses suggests that data were probably most often missing for employers who had neither formal policies nor any experience with leave-takers.

5

Figure 3.1

Pre-statute Employer Leave Policy and Practice for Biological Mothers After Childbirth

Employer Leave Policy and Practice	All Employers by State				Combined 4-State Sample
	MN	OR	RI	WI	
% offering job-guaranteed disability leaves to biological mothers	88% (453)	72% (289)	85% (255)	85% (329)	83%* (1,326)
% having formal, written disability leave policy	19% (470)	27% (303)	24% (253)	33% (358)	25%* (1,384)
Average weeks of leave allowed for disability related to maternity[1]	10.7 (199)	11.3 (131)	11.8 (102)	11.6 (168)	11.3 (600)
% setting fixed limit on disability leave	54% (371)	60% (217)	52% (197)	60% (280)	56% (1,066)
% allowing use of unpaid leave for disability	93% (403)	97% (287)	83% (234)	83% (310)	89%* (1,225)
% offering health insurance benefits to employees	40% (468)	77% (310)	73% (250)	63% (357)	60%* (1,385)
% of those offering health insurance continuing employer contribution to these benefits during disability leave	74% (186)	53% (238)	72% (184)	70% (225)	67%* (833)
% offering job-guaranteed post-disability leaves to biological mothers	67% (470)	54% (303)	65^ (253)	65% (358)	63% (1,384)
% having formal, written post-disability leave policies	13% (41)	16% (297)	16% (253)	22% (314)	17% (1,274)
Average weeks of post-disability leave allowed[1]	9.9 (191)	9.2 (121)	9.9 (100)	6.1 (151)	8.7 (562)
% setting fixed limit on post-disability leave	54% (356)	58% (209)	56% (178)	60% (250)	57% (993)

*x^2 or F significant $p<.0001$

Sample sizes available for analysis shown in parentheses.

[1] Employers that did not indicate a fixed time limit for leaves were excluded from this analysis.

Source: Families and Work Institute, 1991

Formal Policy Regarding Disability Leave

Formal, written, and circulated policies have the effect of providing consistent treatment for all employees covered by the policies and seeking leave. Informal practice typically lacks such consistency. Only 25 percent of all employers in the four states reported having formal, written policies describing the disability leave benefits available to biological mothers after childbirth in the pre-statute period. The proportion with formal policies ranged from 19 percent in Minnesota to 33 percent in Wisconsin. In short, although most employers in the four states *generally* offered leave to biological mothers, few *formally* guaranteed the availability of such leave.

Period of Leave for Disability

The medically recommended minimum period for physical recuperation after childbirth is 6 weeks, increasing to 8 weeks for women who deliver by Caesarean section. Many women are also medically advised to take some time off before delivery, and sometimes maternity-related disability lasts for months. The average temporary disability insurance claim for maternity is slightly more than 10 weeks.[1]

The periods of leave required by statutes in the four states included in this study are modest. Minnesota requires only 6 weeks in total, the minimum recommended by the medical profession for disability following normal pregnancy and childbirth. Wisconsin also requires 6 weeks; however, under Wisconsin's law, 6 weeks of parental leave can be added to whatever disability leave is provided if the employer already has a formal disability leave policy. As noted above, a third of Wisconsin's employers did have formal written disability leave policies. Oregon, in contrast, requires 12 weeks of leave, but if at least one parent works for a covered employer, the two parents must split the 12 weeks unless their employers agree to other terms. Rhode Island requires 13 weeks, thereby allowing a brief period of post-disability parenting time.

Among employers that set a fixed limit on leave before enactment of the statutes, the average amount of leave allowed for biological mothers following childbirth was 11.3 weeks, ranging from 10.7 weeks in Minnesota to 11.8 weeks in Rhode Island. However, 13 percent of employers who set fixed limits on disability leave following childbirth offered less than the medically recommended 6 weeks. A substantial number of employers (44 percent) did not set fixed limits in the pre-statute period, instead treating the leave period as "indefinite" and negotiable.

Unpaid Disability Leave Options

Statutes in all four states require that employers allow employees eligible for parental leave to take unpaid leave, rather than restrict the total length of leave to the amount of paid vacation, sick, or personal days the employee has accrued. Although some employees themselves choose to use accrued paid leave days in order to replace lost wages, many have not accrued—or are not given—sufficient paid sick, vacation, and personal days to cover all of the necessary leave period. Others may want to save these paid days off to care for sick children later on.

Fully 89 percent of employers in the pre-statute sample allowed employees to take unpaid leave during the period of disability. The proportion allowing unpaid leave ranged from 83 percent in Wisconsin and Rhode Island to 97 percent in Oregon.

Health Insurance Benefits

Statutes in two states—Rhode Island and Wisconsin—require employers to continue their contributions to pre-existing health insurance plans. If employers in those states did not contribute toward the health insurance premiums of employees on the job prior to enactment of the statutes, they were not required to do so during the period of leave under the new laws. However, if employers did contribute, the statutes required them to continue their contributions during the leave period. In both Rhode Island and Wisconsin, employers are permitted to require employees to deposit the full premium amounts in escrow accounts. The employer's share is then refunded to employees upon their return to work.

Among employers in the study sample, only 60 percent offered health insurance plans before the statutes were passed. The percentage of employers offering plans in the pre-statute period ranged from 40 percent in Minnesota to 77 percent in Oregon. The percentage of employers that offered plans and also continued their contributions during the disability leave period ranged from a low of 53 percent in Oregon to a high of 74 percent in Minnesota. Interestingly, employers in Minnesota were least likely to offer health insurance benefits but most likely to continue their contributions during the leave period, while Oregon employers were most likely to offer health insurance benefits but least likely to continue them.

Job-guaranteed Post-disability Leave for Parenting

As previously discussed, *parental leave* for women following childbirth generally includes time after the period of maternity-related disability that can be used for early parenting, or post-disability leave. As shown in the lower section of Figure 3.1, only 63 percent of employers in the pre-statute period allowed biological mothers additional job-guaranteed leave time after the period of disability—20 percent fewer than offered job-guaranteed disability leave.

Formal Policy Regarding Post-disability Leave

While only 25 percent of employers guaranteed the availability of disability leaves in formal, written policies, even fewer (17 percent) had formal policies regarding post-disability leaves for biological mothers. Before the enactment of state parental leave laws, arrangements for post-disability leave were mainly determined on a case-by-case basis.

Period of Post-disability Leave for Parenting

Among employers who set fixed limits on the amount of post-disability leave that could be taken, the average amount was 8.7 weeks for the combined four-state sample, ranging from 6.1 weeks in Wisconsin to 9.9 weeks in Minnesota and Rhode Island. Fifty-seven percent of employers set fixed limits on post-disability leave for biological mothers compared with 56 percent who did so for disability leave. Other employers (43 percent) treated the leave period as "indefinite" and negotiable.

Revisiting the Debate

Many employers in the four states studied appear to have been providing basic leave benefits to biological mothers even before the passage of state laws. Although this finding might appear to fly in the face of some other research, it is confirmed by biological mothers' self-reports, which are analyzed in Chapter IV. *The State Parental Leave Study* was specifically designed to capture not only the *formal policy*, but also the *normative practices*, of employers and, at least in the four states, most employers claimed to allow some amount of job-guaranteed leave following childbirth. We do not know whether business practice is as progressive in other states.

The findings, however, also confirmed concerns that many biological mothers were not protected by *guaranteed* leave benefits in the workplace. Only 25 percent of employers had formal policies regarding leave for disability, and even fewer (17 percent) had formal policies regarding post-disability leave for parenting. Moreover, some employers (13 percent) did not allow even the medically recommended minimum 6 weeks of disability leave following childbirth.

Did pre-statute leave policy and practice for biological mothers vary in relation to employer characteristics?

Widespread opinion and some research suggests that voluntary employer leave policies and practice vary in relation to employer size and business sector, or type of industry.

Employer Size

In all four states, there was considerable debate about which employers should be exempt from the requirements of the statutes, and it was agreed that exemption thresholds should be established to exclude small employers for whom the requirements might be excessively burdensome. However, defining "small" was largely a product of opinion rather than empirical evidence of the relative burden of parental leave legislation in relation to size. Rhode Island and Wisconsin lawmakers ultimately exempted companies that employed fewer than 50 employees in their states. Oregon exempted companies with fewer than 25 employees in the state; Minnesota, those with fewer than 21 employees.

The findings presented in Figure 3.2 reveal some relationship, but not a consistent relationship, between employer size and parental leave policy and practice affecting biological mothers prior to enactment of leave statutes. Differences among employers of different sizes were substantial (statistically significant at p <.0001)* for only two aspects of leave policy and practice. First, companies with fewer than 50 employees statewide were less likely than larger employers to have formal, written policies for either disability or post-disability leaves. (It is to be noted that the leave statutes passed do not require written policies, so laws in this case do not disproportionately affect smaller companies.) Second, analysis revealed that companies with fewer than 21 employees statewide were less likely than larger employers to allow unpaid disability leave time. Instead, they were more likely to limit the leave to the use of accrued time off, such as vacation days.

---

* When data analysis showed that differences between groups were extremely unlikely to have happened by chance (e.g., p<.0001 means that there is one chance in 10,000 that this difference would have happened by chance), we refer to such findings as "significant" in the text.

Figure 3.2

Pre-statute Employer Leave Policy and Practice for Biological Mothers After Childbirth

— By Employer Size and Industry Type —

	Employer Size Number of Employees at Site				Industry		
Employer Leave Policy and Practice	Under 10	10–20	21–49	50 or More	Goods-Producing	Trade	Service
% offering job-guaranteed disability leaves to biological mothers	79% (431)	89% (296)	83% (220)	84% (272)	77% (325)	89% (193)	85% (493)
% having formal, written disability leave policy	20% (459)	18% (319)	16% (231)	48%* (264)	24% (339)	28% (190)	25% (543)
Average weeks of disability leave allowed[1]	9.1 (177)	12.7 (128)	11.0 (110)	13.1 (140)	11.4 (142)	8.2 (103)	12.2 (230)
Average weeks of post-disability leave allowed[1]	8.2 (163)	9.1 (126)	8.0 (106)	10.5 (125)	9.0 (138)	5.1 (92)	9.3 (224)
% setting fixed limit on disability leave	55% (32)	50% (257)	58% (184)	65% (214)	57% (251)	60% (172)	57% (405)
% allowing use of unpaid leave for disability	85% (360)	83% (292)	96% (223)	94%* (259)	94% (316)	84% (189)	87% (468)
% offering health insurance benefits to employees	35% (451)	55% (310)	83% (230)	91%* (273)	82% (346)	65% (205)	49%* (501)
% of those offering health insurance continuing employer contributions to these benefits during disability leave	66% (158)	78% (169)	61% (190)	67% (249)	68% (283)	66% (134)	62% (243)
% offering job-guaranteed post-disability leaves to biological mothers after delivery	66% (459)	54% (319)	58% (231)	62% (264	9.0 (138)	5.1 (92)	9.3 (224)
% having formal, written post-disability leave allowed	12% (420)	13% (277)	10% (217)	28%* (264)	12% (331)	20% (177)	17% (489)
% setting fixed limit on post-disability leave	52% (314)	56% (227)	61% (172)	61% (205)	57% (244)	64% (144)	57% 394)

*x^2 or F significant $p<.0001$

Sample sizes available for analysis shown in parentheses

[1] Employers that did not indicate a fixed time limit for leaves were excluded from this analysis.

Source: Families and Work Institute, 1991

It is interesting to note that smaller employers were much less likely than larger ones to offer health insurance benefits (not required by statute in any state). This figure ranged from 35 percent of employers with fewer than 10 employees to 91 percent of those with 50 or more. However, there was no significant difference in the proportions of employers of different sizes that continued their contributions to pre-existing health insurance plans during the period of leave—a requirement of the leave statutes in Rhode Island and Wisconsin, but not in Minnesota or Oregon.

Industry

Pre-statute data from the four states do not suggest substantial differences among major business sectors in the parental leave benefits offered to biological mothers. Only in the case of health insurance benefits provided before leave periods—not a legal requirement in any state—were differences large ($p<.0001$). Goods-producing industries were much more likely (82 percent) to have health insurance plans than either the wholesale and retail trades (65 percent) or service industries (49 percent). However, there was no significant difference in the proportions of employers in different business sectors that continued their contributions to pre-existing health insurance plans during parental leave—a statutory requirement only in Rhode Island and Wisconsin.

Revisiting the Debate

To the extent that voluntary implementation of parental leave benefits prior to enactment of state statutes is a good indicator of the relative burden of statutory requirements on employers of different sizes or in different industries, the findings of this study do not suggest that small employers or employers in particular business sectors would suffer unduly from the imposition of leave requirements of the sort enacted in the four states. Indeed, it may not be necessary to set exemption thresholds, based on employer size, as high as those established in the four states in order to avoid adverse effects on small businesses.

The most notable difference among employers of different sizes, and in different business sectors, was in the provision of health insurance benefits to employees not on leave. Although leave statutes do not require employers to implement health insurance plans, only to continue their contributions to pre-existing plans during leaves, the widespread unavailability of job-related health insurance coverage in many workplaces, especially in the services sector, exposes many employees to enormous financial and health risks.

Explaining Differences Among States

Findings presented in Figure 3.1 (above) revealed several significant differences among the four states in pre-statute benefits for biological mothers. Of these differences, two may be related to differences in the proportions of smaller and larger employers in the states. In Minnesota, which had the highest proportion of small employers in the sample, employers were found least likely to have formal, written leave policies or to offer health insurance benefits to their employees. Other differences among the states, however, do not appear to be products of differences in either employer size or industry composition.

What proportion of covered employers already offered leave to biological mothers that complied with the new parental leave statutes?

Covered employers are those with numbers of employees statewide that exceeded the exemption thresholds defined in each statute. When state statutes were enacted, all covered employers were required to comply with statutory requirements. In this section of the report, we estimate the proportion of employers who were in partial or full *compliance* prior to enactment of state laws. Limitations of the questionnaire methodology do not permit precise measurement of compliance during the pre-statute period; however, the approximate proportion of employers who were in compliance can be estimated. Although we believe these estimates provide useful criteria for judging the global impact that passage of state parental leave laws had on employer practice in the four states, readers should not treat them as exact measures. Specifically, it should be noted that the estimates presented here, and subsequently, probably overestimate rates of employer compliance, since employers were generally given the "benefit of the doubt" when responses were ambiguous or selected pieces of information were not available. It is also not possible to generalize these findings to other states since their employer practices and policies may differ substantially. It is conceivable that these states, which were among the first to enact leave legislation, might have more progressive employers than other states.

Partial Compliance

We first investigated the degree to which covered employers provided job-guaranteed leaves of the required length (disability leave plus post-disability leave for parenting) before the statutes were enacted.[*] Since state laws contain other requirements as well, this was a measure of

---

[*] Employers were considered to be in compliance if 1) they set fixed amounts of disability plus post-disability leave that equaled or exceeded statutory requirements in their state or 2) they allowed some disability leave plus an indefinite amount for parenting. The decision to give employers who said "indefinite" the benefit of doubt in this instance was guided by findings from the parent questionnaire reported in Chapter IV.

partial, rather than full, compliance with the laws.

Figure 3.3 illustrates the percentage, by state, of covered employers that were in partial compliance. Prior to passage of the state law, an estimated 93 percent of covered employers in Minnesota offered biological mothers job-guaranteed leaves of the length required by statute. The proportions of covered employers in partial compliance with state statutes, however, were much lower in Oregon (64 percent) and Rhode Island (60 percent), while Wisconsin employers fell in between (76 percent).

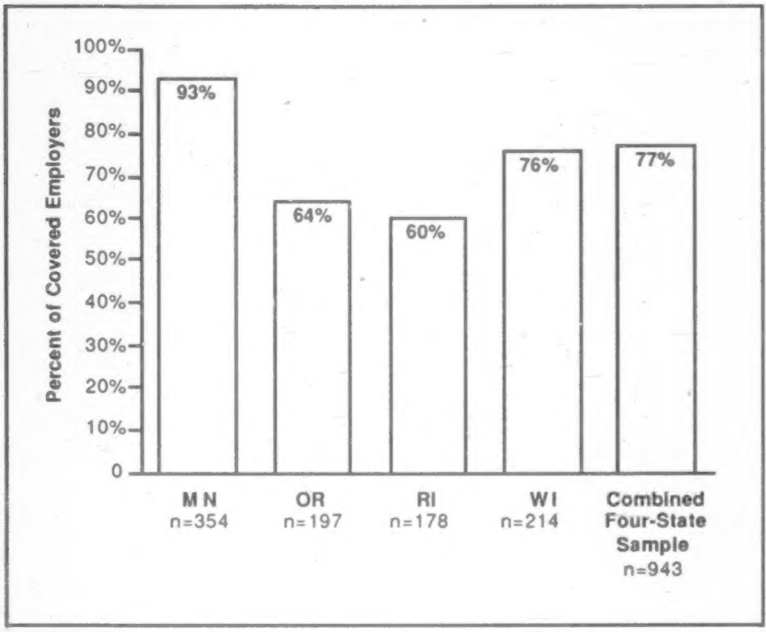
The difference in rates of partial compliance among covered employers in the four states prior to enactment is clearly associated with differences in the amount of leave required by state laws. Minnesota, which had the highest rates of partial compliance, required the shortest leave period—6 weeks. Wisconsin, which had an intermediate rate of partial compliance, required all employers to provide a minimum of 6 weeks of leave, and required those employers who had formal disability leave policies in place before enactment of the statute (one-third of covered employers) to provide 6 weeks of parental leave in addition to whatever time they provided for disability. Oregon and Rhode Island, with the lowest rates of partial compliance, required longer leaves of all employers—12 and 13 weeks, respectively.

Figure 3.3

PARTIAL COMPLIANCE

Percentage of Covered Employers Meeting Statutory Requirement for Length of Job-guaranteed Leave for Biological Mothers Prior to Passage of State Statute

— By State —



*x^2 significant p<.0001

Source: Families and Work Institute, 1991

Full Compliance

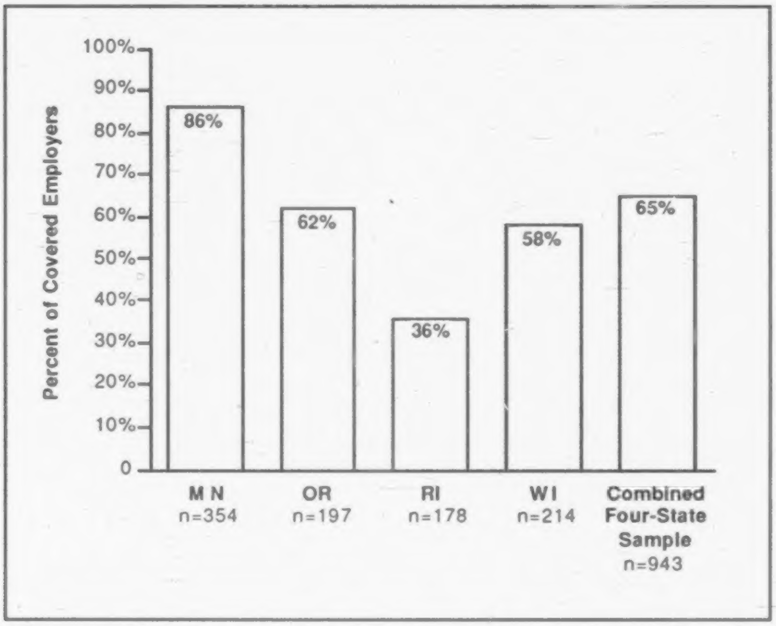
Employers who met all major requirements of their state parental leave laws before enactment were considered to be in *full* compliance. These included: 1) required length of job-guaranteed leave; 2) option to take unpaid leave (i.e., without limiting leave to accrued paid time off); and 3) continuation of employer contributions to pre-existing health insurance plans in Rhode Island and Wisconsin.

Figure 3.4

FULL COMPLIANCE

Percentage of Covered Employers Meeting All Statutory Leave Requirements for Biological Mothers Prior to Passage of State Statute

— By State —



*χ^2 significant p<.0001

Source: Families and Work Institute, 1991

As indicated in Figure 3.4 above, an estimated 65 percent of covered employers in the combined four-state sample were in full compliance with all major provisions of state laws *before* enactment. The rate of full compliance was highest in Minnesota (86 percent) and lowest in Rhode Island (36 percent), as was the case for partial compliance. Comparing partial compliance (Figure 3.3) with full compliance (Figure 3.4), rates can be seen to decline for all states because of the inclusion of additional legal requirements. However, employer compliance rates dropped most substantially in Rhode Island (from 60 to 36 percent) and Wisconsin (from 76 to 58 percent). These pronounced declines in Rhode Island and Wisconsin may be explained by the fact that only these two states required employers to continue their contributions to pre-existing health insurance plans during the leave period.

LEAVE POLICY AND PRACTICE AFFECTING BIOLOGICAL FATHERS

Parental leave, in contrast to "maternity" leave, extends basic leave benefits to biological fathers as well as mothers. Still called "paternity" leave by many, growing interest in parental leave for fathers after the birth of a child reflects fundamental cultural changes that place increasing value on the roles of fathers as parents, in addition to their roles as breadwinners or co-breadwinners with their spouses.

The Debate

In the debate over legislated parental leave, the extension of leave benefits to fathers has been treated as a side issue by some opponents, who have argued that most fathers do not want to take significant amounts of time off after the birth of a child, and that accrued vacation and personal days suffice to meet whatever needs they may have. Others have been concerned that usage patterns could change—that more fathers might take leave in the future—and thereby create a hardship for businesses. Proponents, however, have argued that fathers have important and equal parenting responsibilities after the birth of a child, and deserve both equal rights and encouragement to take on parenting responsibilities.

What policies and practices were in effect for biological fathers before enactment of the parental leave statutes?

Prior to enactment of parental leave statutes, some 60 percent of employers in the total four-state sample reported they offered time off from work to biological fathers after the birth of a child, and 88 percent of those offering leaves allowed fathers to take unpaid time away from work (Figure 3.5). There were no significant differences ($p<.0001$) among state employer samples with respect to either of these leave characteristics.

Figure 3.5

Pre-statute Employer Leave Policy and Practice for Biological Fathers After the Birth of a Child

	All Employers by State				Combined
Employer Leave Policy and Practice	MN	OR	RI	WI	4-State Sample
% offering job-guaranteed leaves to biological fathers	63% (412)	58% (323)	54% (227)	63% (309)	60% (1,271)
% having formal, written leave policy	13% (270)	15% (208)	25% (116)	28% (209)	19%* (803)
Average weeks of leave allowed[1]	5.4 (133)	6.7 (76)	15.7 (45)	9.5 (94)	8.2* (348)
% allowing use of unpaid leave	88% (274)	93% (214)	85% (122)	86% (206)	88% (816)

*χ^2 or F significant p<.0001

Sample sizes available for analysis shown in parentheses.

[1] Employers that did not indicate a fixed time limit for leaves were excluded from this analysis.

Source: Families and Work Institute, 1991

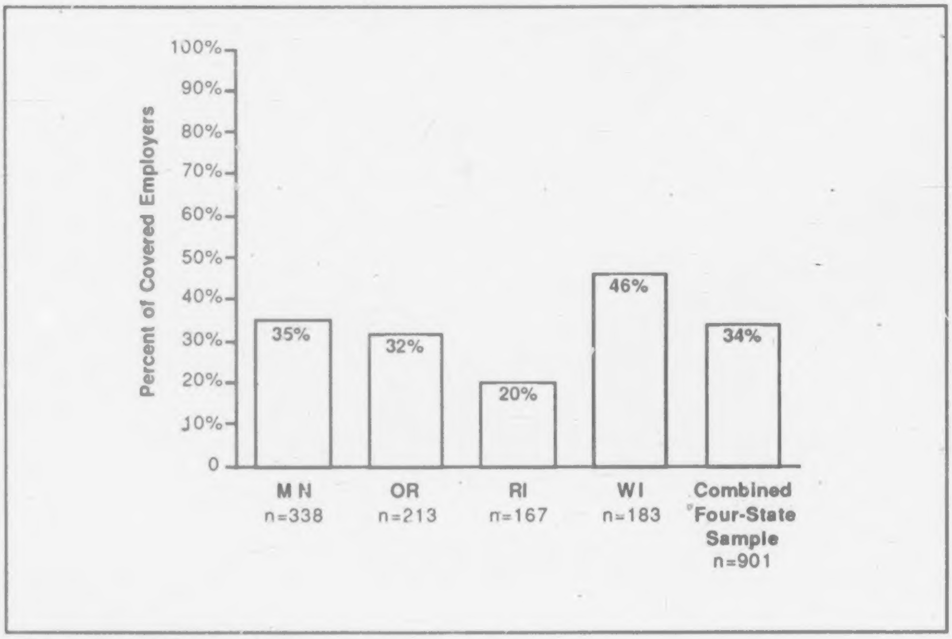
Employers in the four states did differ, however, with respect to the proportion having formal, written leave policies for fathers and the average number of weeks allowed for leaves. The proportion of employers with formal policies for fathers ranged from a low of 13 percent in Minnesota to a high of 28 percent in Wisconsin. The average length of leaves offered by employers who set fixed limits ranged from 5.4 weeks in Minnesota to 15.7 weeks in Rhode Island. The great majority of employers offering leaves did not set fixed limits, perhaps reflecting a lack of concern that biological fathers would, in fact, seek extended leaves for parenting.

What proportion of covered employers already offered leaves for biological fathers that complied with parental leave statutes?

The impact of parental leave statutes on biological fathers' leave benefits was assessed by estimating the proportion of employers whose pre-statute policy and practice conformed to two major statutory provisions: 1) required length of job-guaranteed leave and 2) options for unpaid leave that did not limit leave to accrued paid time off. Continuation of employer contributions to health insurance plans for biological fathers, though required by Rhode Island and Wisconsin statutes, was not measured in this questionnaire.

As shown below in Figure 3.6, the estimated proportion of employers in full compliance for biological fathers was much lower (34 percent) than it was for biological mothers (65 percent). Rates differed significantly ($p<.0001$) by state, ranging from a low of 20 percent in Rhode Island to a high of 46 percent in Wisconsin. As with compliance for biological mothers, rates for biological fathers were highest in states with shorter required lengths of leave (Wisconsin and Minnesota) and lowest in states with longer required lengths of leave (Oregon and Rhode Island).

Figure 3.6
BIOLOGICAL FATHERS
Percentage of Covered Employers Already Meeting Most Major Statutory Requirements Regarding Leave for Biological Fathers After the Birth of a Child
— By State —



*x^2 significant $p<.0001$

Source: Families and Work Institute, 1991

Revisiting the Debate

Prior to the passage of state parental leave laws, only an estimated 34 percent of employers in the four states offered leaves meeting the statutes' requirements. Clearly the passage of parental leave statutes greatly improved the leave benefits available to biological fathers. The degree to which new fathers have taken advantage of these new benefits is examined in Chapter IV.

LEAVE POLICY AND PRACTICE AFFECTING ADOPTIVE PARENTS

As a condition of adoption, most agencies require one or both adoptive parents to take significant time off from work when they take custody of their child.

The Debate

Opponents argued against parental leave legislation in general, rather than against the inclusion of adoptive parents in particular. Proponents emphasized the important roles that adoptive parents play in society, as well as in the lives of their children. They also speculated that parental leave for adoptive parents might increase the rate of adoption, thereby reducing societal costs of foster and institutional care. In addition, they noted that relatively few employees would ever require leave for adoption.

What policies and practices for adoptive parents were in effect before enactment of the parental leave statutes?

Interestingly, pre-statute leave benefits were generally somewhat more generous for adoptive parents than for biological fathers (Figure 3.7). Employers in the combined four-state sample more often offered job-guaranteed leave to adoptive parents than to biological fathers (71 versus 60 percent), gave adoptive parents more time off on average (10.2 weeks versus 8.2 weeks), and more often allowed adoptive parents to take unpaid time off (91 versus 88 percent). The only significant difference (p<.0001) among state employer samples was in the proportion of employers offering any leave to adoptive parents. Minnesota employers (80 percent) were most likely to offer leave benefits; Oregon employers (61 percent), least likely.

Figure 3.7

Pre-statute Employer Policy and Practice Regarding Leave for Adoptive Parents After Adoption of a Child

Employer Leave Policy and Practice	All Employers by State				Combined 4-State Sample
	MN	OR	RI	WI	
% offering leave to adoptive parents	80% (395)	61% (290)	73% (217)	68% (304)	71%* (1,205)
% having formal, written leave policy	13% (280)	14% (172)	13% (129)	20% (196)	15% (777)
Average weeks of leave allowed[1]	9.0 (156)	9.6 (62)	15.1 (50)	9.9 (107)	10.2 (374)
% allowing use of unpaid leave	90% (301)	92% (179)	88% (154)	93% (199)	91% (834)

*x2 or F significant p<.0001

Sample sizes available for analysis shown in parentheses.

[1] Employers that did not indicate a fixed time limit for leaves were excluded from this analysis.

Source: Families and Work Institute, 1991

What proportion of covered employers already offered leaves for adoptive parents that complied with parental leave statutes?

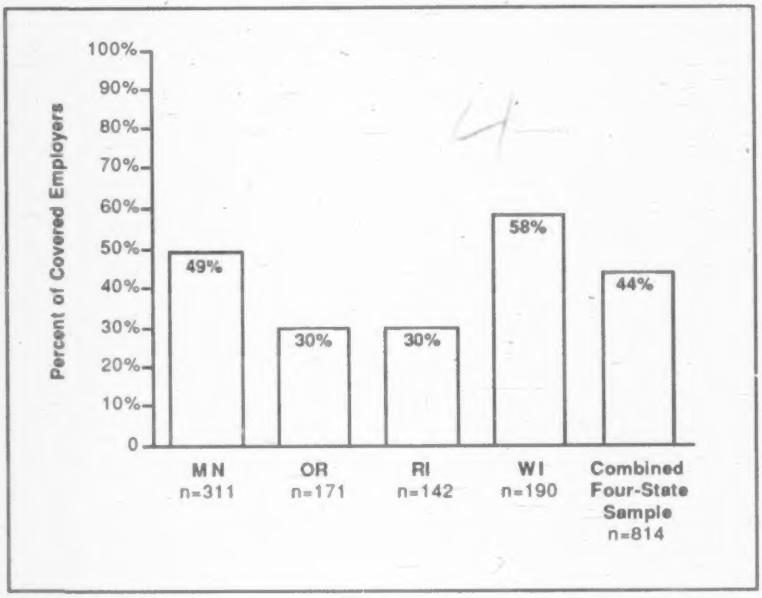
The impact of parental leave statutes on adoptive parents' leave benefits was assessed by estimating the proportion of employers whose pre-statute policy and practice conformed to two major statutory provisions: 1) required length of job-guaranteed leave and 2) options to take unpaid leave that did not limit leave to accrued paid time off. Continuation of health insurance benefits for adoptive parents, though required by Rhode Island and Wisconsin statutes, was not measured in this questionnaire.

As shown in Figure 3.8, the estimated proportion of employers in full compliance for adoptive parents prior to enactment in the four states was 44 percent—10 percentage points higher than for biological fathers, although substantially lower than for biological mothers (65 percent). Rates differed significantly (p<.0001) by state, ranging from a low of 30 percent in Rhode Island and Oregon to a high of 58 percent in Wisconsin. As with leave compliance for biological mothers and fathers, rates were highest in states with shorter required lengths of leave (Wisconsin and Minnesota) and lowest in states with longer required lengths of leave (Oregon and Rhode Island).

Figure 3.8

ADOPTIVE PARENTS

Percentage of Covered Employers
Already Meeting Major Statutory Requirements
Regarding Leave After the Adoption of a Child
— By State —



x2 significant at p<.0001

Source: Families and Work Institute, 1991

Revisiting the Debate

As in the case of biological fathers, enactment of parental leave statutes greatly expanded the availability of leave benefits for adoptive parents. Evidence regarding possible effects on rates of adoption and social costs is not available.

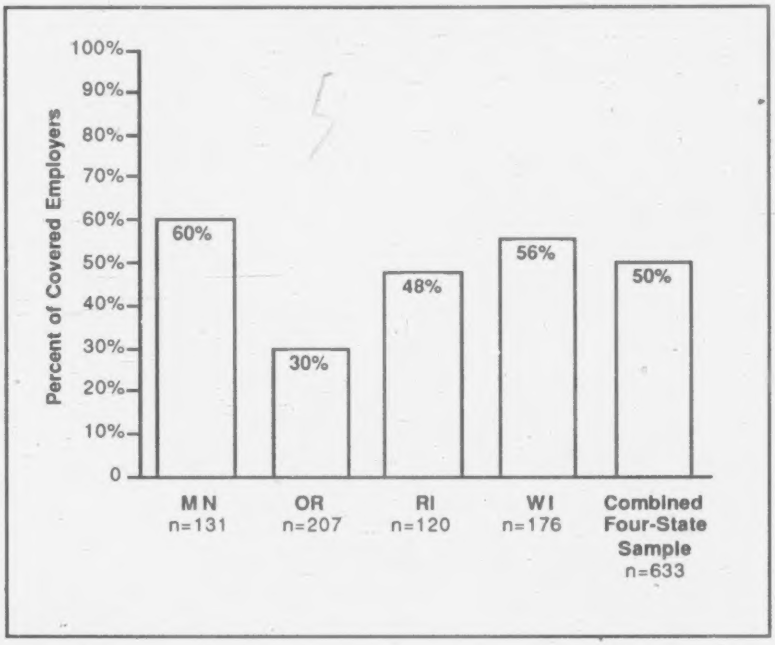
What proportion of employers already offered parental leave packages that complied with proposed federal leave laws?

Federal parental leave bills have been introduced in Congress, but not enacted, for several years running. The current leading proposals in the U.S. Congress* require all employers with more than 50 employees to provide 12 weeks of leave to biological mothers, biological fathers, and adoptive parents, with continuation of employer contributions to pre-existing health insurance plans. Of the state statutes examined in this study, Rhode Island's statute is most similar to the federal bills.

---

* Family and Medical Leave Acts of 1991 (S.5 and H.R.2) also provide family leave and personal medical leave, but this study focuses on the parental leave aspect of the proposed legislation.

Figure 3.9
BIOLOGICAL MOTHERS
Percentage of Covered Employers Already Meeting All Major Requirements of Proposed Federal Law Regarding Parental Leave[1]
— By State —



x^2 significant at $p<.0001$

[1] The sample of covered employers is greatly reduced in size by the proposed federal exemption threshold of 50 employees.

Source: Families and Work Institute, 1991

Compliance with Proposed Federal Laws for Biological Mothers

As indicated in Figure 3.9 (above), estimated employer compliance rates for biological mothers fall dramatically in three of the four states when proposed federal requirements are imposed. In Rhode Island, the compliance rate actually increases somewhat under the slightly less demanding proposed federal requirements. Nevertheless, estimated rates of compliance remain highest in Minnesota (60 percent) and Wisconsin (56 percent), with Rhode Island (48 percent) close behind and Oregon (30 percent) a distant third. The notably lower compliance rates by Oregon employers may be explained in large part by the fact that employers in Oregon were significantly less likely (53 percent) to continue health insurance benefits during the leave period than employers in other states (70 percent or more) as previously indicated (Figure 3.1).

Compliance with Proposed Federal Laws for All Parents

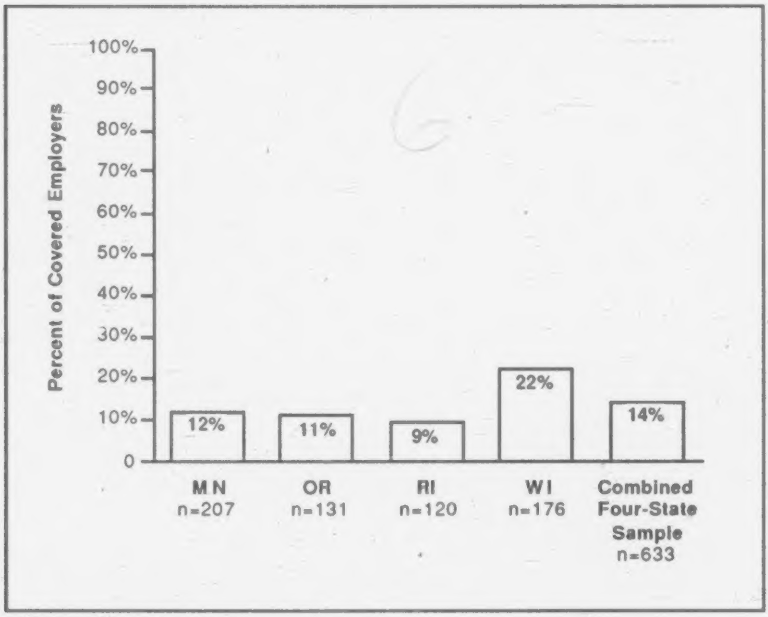
Figure 3.10 shows the estimated proportions of employers, by state, meeting proposed federal requirements for *all* parents—biological mothers, biological fathers, and adoptive parents. When leave requirements for *all* parents are considered simultaneously, compliance falls dramatically. Overall, only 14 percent of employers had policies and practices for all parents that conform to the major provisions of the federal proposals. The employer compliance rate was highest in Wisconsin (22 percent) and lowest in Rhode Island (9 percent).

Figure 3.10

ALL PARENTS

Percentage of Covered Employers Meeting All Major Requirements of Proposed Federal Law Regarding Parental Leave[1]

— By State —



x^2 not significant at $p<.0001$

[1] The sample of covered employers is greatly reduced in size by the proposed federal exemption threshold of 50 employees.

Source: Families and Work Institute, 1991

Revisiting the Debate

Although about two-thirds (65 percent) of the employers in the four states voluntarily provided the leave benefits to biological mothers required by their state statutes, as opponents have argued, only 50 percent of employers in the total four-state sample would meet proposed federal requirements for biological mothers. Few employers met *all* requirements for *all* parents. Clearly, passage of the proposed federal law would have some impact on the normative practices and policies of most employers. Nonetheless, the proposed federal standards are more modest than many parental leave advocates have recommended and which many other industrialized nations already require by law.

IMPLEMENTATION ISSUES

How well do employers understand their obligations under the new laws?

Employer descriptions of post-statute policy and practice were taken as an indication of how well employers—that is, the employer representatives who completed the questionnaires—understood their obligations under the law.

The proportions of covered employers who reported post-statute leave benefits that fulfilled major statutory requirements are shown in Figure 3.11. While these percentages are substantially higher than the pre-statute compliance estimates presented in Figures 3.3 and 3.4 (above), it is apparent that many employers still did not fully understand their obligations even one to 2 years after enactment of parental leave statutes in their states.

Overall, 76 percent of covered employers reported post-statute leave benefits for biological mothers which satisfied the minimum requirements of state laws. Knowledge of these requirements appears to have been lowest in Rhode Island, where only 51 percent of employers reported offering required leave benefits, and highest in Minnesota, where 91 percent of employers described leave benefits for biological mothers that satisfied statutory requirements. The proportion of employers in the total four-state sample whose reported leave benefits met state standards for biological fathers was only 56 percent and 64 percent for adoptive parents. Employers' understanding of their legal obligations to biological fathers and adoptive parents did not vary significantly ($p<.0001$) by state.

Figure 3.11

Percentage of Covered Employers Reporting Post-statute Leave Benefits Meeting Major Statutory Requirements

Employer Leave Policy and Practice	Covered Employers by State				Combined 4-State Sample
	MN	OR	RI	WI	
% reporting required benefits for biological mothers	91% (354)	85% (195)	51% (171)	60% (201)	76%* (920)
% reporting required benefits for biological fathers	54% (321)	52% (179)	51% (151)	67% (177)	56% (828)
% reporting required benefits for adoptive parents	69% (296)	53% (169)	57% (142)	71% (176)	64% (783)

*x^2 significant $p<.0001$

Sample sizes available for analysis shown in parentheses.

Source: Families and Work Institute, 1991

In an effort to explain why large numbers of employers appeared not to know the requirements of state parental leave statutes just under 2 to 3 years after their enactment, several possible reasons were examined. Perhaps employers who had no post-statute experience with employees requesting parental leave were less knowledgeable. Likewise, small employers lacking specialized personnel departments might be less familiar with their legal obligations. Finally, it seemed possible that the job positions of the actual questionnaire respondents within the company might be related to their specific knowledge of leave requirements. That is, owners of companies might be less familiar with requirements than someone in a human resources function.

Analyses (multiple linear regressions on unweighted sample data) indicated that the amount of post-statute experience with leave-taking, company size, and the respondent's position within the company were related to employers' apparent knowledge of statutory requirements regarding leave for biological mothers, biological fathers, and adoptive parents. Employers with more experience of employees taking leaves at their company were more knowledgeable than employers with less experience. Larger companies were more knowledgeable than smaller companies. Respondents with titles of Personnel or Human Resources Director, Personnel or Human Resources Staff, and Chief Executive Officer were more knowledgeable than respondents who classified themselves as Owners or "other."

Implications

The implications of employers' apparent lack of knowledge about state laws are potentially serious, especially given the fact that close to 2 years had elapsed since their passage. Employers who do not comply with the requirements of state statutes are vulnerable to grievances and lawsuits. (See Chapter V, *Enforcement*.) Employees whose employers are ill-informed may not receive the leave benefits to which they are legally entitled. To avoid unnecessary grievances and litigation, and to ensure the guarantee of basic leave benefits to parents, state officials, business organizations, and community advocates must engage in more active outreach to both employers and employees.

How do employers cover the work of employees on leave?

How work is covered while employees are on leave has potentially significant cost implications for employers, ranging from fees paid for the services of outside temporary workers to unemployment claims filed by replacement employees who are let go when leave-takers return.

The Debate

Opponents of mandatory parental leave argued that employers, particularly smaller employers, would be forced to use costly methods to cover the work of absent employees. In response, proponents cited a cost study conducted by the U.S. General Accounting Office, which found that most employers that did not use temporary workers were able to cover the work of employees on unpaid leave at little or no additional cost.[2]

Methods of Coverage

Figure 3.12 shows the methods of work coverage "most often" used by employers in the four states that were covered by parental leave statutes and had post-statute experience with leave-takers. By far the most frequent method of coverage was to assign work temporarily to another employee. Of employers in the four-state sample, 67 percent most often used this method while 23 percent most often brought in outside temporary workers. Together, these two methods accounted for 90 percent of responses. Only 4 percent of employers said they most often hired permanent replacements; one percent reported that they most often permanently assigned the leave-taker's work to another employee; and one percent reported that they most often left work undone while an employee was on leave. There was no appreciable difference between employers with fewer than 50 employees in the state and those with either 50 to 99, or 100 or more employees, with respect to the methods of coverage most often used.

Figure 3.12

Method Most Often Used to Cover the Work of Employees on Leave Among Covered Employers with Post-statute Experience

	Covered Employers by State				Combined
Method of Coverage Most Often Used	MN	OR	RI	WI	4-State Sample
Hired outside temporary replacement	24%	29%	27%	13%	23% (131)
Hired outside permanent replacement	4%	6%	5%	(a)	4% (22)
Assigned work temporarily to other employee	64%	62%	60%	82%	67% (377)
Assigned job permanently to another employee	2%	1%	2%	(a)	1% (7)
Paid overtime to existing employee(s)	2%	2%	5%	(a)	3% (14)
Eliminated the job	—	—	—	—	— (0)
Employee worked at home during leave	1%	—	—	4%	1% (7)
Left work undone until return	2%	(a)	1%	—	1% (5)
Other	1%	—	(a)	(a)	(a) (2)

(a) Equals less than 0.5%

Actual number of employers choosing each response option given in parentheses. Test of statistical significance could not be performed because of low expected frequencies for many cells.

Source: Families and Work Institute, 1991

Revisiting the Debate

The findings from this study closely parallel those reported by the General Accounting Office and the Small Business Administration.[3] They challenge the contention that most employers would be forced to bring in replacement workers from outside at great expense, although just under one-fourth of employers do report using this method. Even smaller employers, within the range covered by state laws, were generally able to reassign work temporarily to other employees.

Have the statutes affected business costs or effectiveness?

The questionnaire asked employers in the four states to evaluate the effects of parental leave statutes on the cost of doing business and on business productivity.

The Debate

Opponents of mandatory parental leave argued that it would impose great costs on business and lower productivity to the point of endangering the viability of some enterprises. Proponents quoted opponents' claims that "most employers already met their employees' needs for parental leave" and concluded, therefore, that incremental costs would be minimal. Proponents also cited potential benefits, such as improved employee morale and company loyalty, as well as the reduction of costs to workers not previously protected by parental leave statutes.

Costs to Business

Employers' assessments of the impact that parental leave statutes have had on operating costs are presented in Figure 3.13. Only those employers covered by state laws and those with post-statute parental leave experience (44 percent of covered employers) were included in the analysis. Four areas of potential impact were examined—training costs, administrative costs, costs for unemployment insurance, and the costs of health insurance contributions.

The majority of employers perceived no "increase" in cost in any of the four areas. The percentage reporting no increase ranged from a low of 55 percent for administrative costs to a high of 81 percent for unemployment insurance. In the case of training, administrative, and unemployment insurance costs, employers were asked to distinguish between a "significant increase" and "some increase." The proportion reporting significant increases was only 4 percent for training, 6 percent for administration, and 2 percent for unemployment insurance.

Figure 3.13

Employers' Perceptions of the Impact of Parental Leave Statutes on Operating Costs

— Covered Employers with Post-statute Leave Experience —

	Covered Employers by State				Combined
Economic Impact of Statutes	MN	OR	RI	WI	4-State Sample
Training Costs					
Significant Increase	5%	4%	4%	(a)	4%
Some Increase	22%	33%	33%	20%	26%
No Increase	73%	64%	62%	80%	71%
					(591)
Administrative Costs					
Significant Increase	7%	3%	8%	5%	6%
Some Increase	31%	50%	55%	28%	39%*
No Increase	62%	47%	37%	67%	55%
					(597)
Unemployment Insurance					
Significant Increase	3%	2%	4%	8%	2%
Some Increase	14%	13%	30%	12%	17%
No Increase	84%	85%	67%	88%	81%
					(586)
Health Insurance					
Increase	34%	19%	32%	18%	27%
No Increase	66%	81%	69%	83%	73%
					(522)

*x^2 significant $p<.0001$

(a) Equals less than 0.5%

Column percentages do not always add up to 100 percent because of rounding. Sample sizes available for analysis shown in parentheses.

Source: Families and Work Institute, 1991

Employers in the four states differed significantly (p<.0001) only with respect to administrative costs. Rhode Island employers (63 percent) were most likely to indicate an increase, while those in Wisconsin (33 percent) and Minnesota (38 percent) were least likely. As noted previously, Rhode Island's statute was most demanding of employers, while Minnesota's statute was least demanding, which may help to explain reported differences in administrative costs.

The absence of significant differences among the states in reported health insurance costs, as well as the pattern of reported increases, is puzzling. Rhode Island and Wisconsin require employers to continue their contributions to pre-existing health insurance plans during leaves, while Minnesota and Oregon do not. Yet Minnesota employers (34 percent) were most likely to claim that the costs of health insurance benefits increased as a result of state parental leave legislation, while Wisconsin employers (18 percent) were least likely to report increased costs.

Two other findings were equally puzzling. There were no differences between reported cost increases in health insurance due to the parental leave laws from employers that were exempt from compliance and those that were required to comply. Furthermore, there were no differences between reported cost increases for employers that had employees take leaves under the statute and those that had not had this experience. Logically, one would not expect employers that were exempt from compliance with state laws, or that had no experience with leave-takers since passage of the statutes, to report any increased health insurance costs *due to the enactment of state parental leave laws.* However, many unaffected employers did report cost increases.

The proportion of exempt employers claiming statute-related increases in health insurance costs (32 percent) was somewhat (though not significantly) higher than the proportion of covered employers reporting such increases (27 percent). Moreover, employers with no experience with leave-takers were more likely (34 percent, $p<.05$) to claim statute-related increases in health insurance costs than employers that had granted leaves to employees under the new laws (27 percent). These findings suggest that the increased costs reported by employers may have been due in significant part to general increases in the costs of health insurance, rather than to increases caused by the implementation of leave policies meeting the requirements of parental leave laws. The questionable reliability of employers' cost estimates is of particular concern in relation to health insurance, which the U.S. General Accounting Office concluded would represent the largest portion of increased costs associated with legislated leave benefits.[4]

Perhaps, surprisingly, the size of covered employers (fewer than 50 employees, 50 to 99 employees, and 100 or more employees) was not significantly ($p<.0001$ or $p<.001$) related to reported costs. However, pre-statute compliance with provisions of state laws was related to changes in both training and administrative costs, but not to changes in unemployment insurance and health insurance costs. Specifically, employers who were already in compliance when state statutes were enacted were much less likely ($p<.0001$) than employers who had to improve their leave benefits under the new laws to report increases in training costs—23 versus 42 percent—and administrative costs—37 versus 60 percent.

Business Effectiveness

Proponents of parental leave legislation have argued that passage of such legislation could improve productivity, while opponents have argued the opposite. The findings presented in Figure 3.14 reveal no substantial impact on business effectiveness soon after passage of the laws as measured by changes in: 1) managers' ability to handle work responsibilities, 2) ability to recruit employees, 3) employee morale, 4) employee turnover, or 5) employee loyalty.

Only two measures give some hint of small, but potentially meaningful, future impact: 9 percent of employers reported a deterioration in managers' ability to handle work responsibility, and 9 percent reported an improvement in employee morale. There were no differences among states. Since other studies have found a positive relationship between productivity and parental leave, it may be that other factors come into play.

Figure 3.14

Employers' Perceptions of the Impact of Parental Leave Statutes on Business Effectiveness

— Covered Employers with Post-statute Leave Experience —

	Covered Employers by State				Combined
Measure of Effectiveness	MN	OR	RI	WI	4-State Sample
Managers' ability to handle work responsibilities					
Improved	1%	(a)	4%	(a)	1%
No change	90%	88%	87%	92%	89%
Deteriorated	9%	12%	9%	8%	9%
					(575)
Ability to recruit employees					
Improved	1%	(a)	2%	—	1%
No change	98%	90%	96%	97%	96%
Deteriorated	2%	10%	3%	3%	4%
					(574)
Employee morale					
Improved	8%	15%	11%	5%	9%
No change	91%	84%	88%	92%	89%
Deteriorated	1%	2%	2%	4%	2%
					(577)
Employee turnover					
Improved	5%	1%	6%	4%	4%
No change	93%	98%	90%	96%	94%
Deteriorated	2%	1%	4%	—	2%
					(575)
Employee loyalty					
Improved	5%	5%	6%	1%	4%
No change	94%	94%	91%	96%	94%
Deteriorated	1%	1%	4%	4%	2%
					(571)

None significant at $p<.0001$

(a) Equals less than 0.5%

Column percentages do not always add up to 100 percent because of rounding. Sample sizes available for analysis shown in parentheses.

Source: Families and Work Institute, 1991

Revisiting the Debate

The majority of employers—covered by state parental leave laws and having post-statute leave experience—reported no increase in costs related to implementation of legislated leave benefits. Of employers reporting increases, very few indicated that increased costs were significant. When employers' statements about cost increases in health insurance, which the GAO concluded would be the major component of increased costs,[5] were examined in relation to specific statutory requirements, exemption status, and experience with leave-takers, the findings suggested that employers were reacting more to general cost increases than to increases specifically related to implementation of legislated leave benefits. Regarding business effectiveness, it appears to have been neither significantly diminished nor improved by the statutes within the time frame of this study.

How difficult or easy was it for employers to comply with the mandates and why?

The questionnaire asked all employers: "In general, how easy or difficult would you say it has been to implement the new parental leave law in your company?" The question was intended to provide a global assessment of how burdensome passage of state parental leave laws had actually been for employers.

The Debate

Opponents claimed that implementation of mandatory leave would be onerous and costly. Proponents have claimed the opposite.

Difficulty of Implementation

As can be seen in Figure 3.15, only 9 percent of covered employers with post-statute leave experience found implementation difficult. About equal proportions found implementation "neither easy nor difficult" (39 percent) and "extremely easy" (33 percent). The remainder (19 percent) reported that the requirements of state parental leave statutes were "moderately easy" to implement. Assessments of difficulty did not differ significantly ($p<.0001$) by states, and the pattern of absolute differences among states did not parallel differences in the relative burdens imposed by state statutes—Rhode Island's law being most demanding; Minnesota's, least.

Figure 3.15

Employers' Perceptions of Degree of Difficulty in Implementing Leave Benefits Required by Statutes

	Covered Employers by State				Combined
Degree of Difficulty	MN	OR	RI	WI	4-State Sample
	(104)	(222)	(129)	(128)	(583)
Difficult	10%	16%	6%	4%	9%
Neither easy nor difficult	44%	33%	36%	37%	39%
Moderately easy	23%	10%	24%	17%	19%
Extremely easy	24%	42%	35%	42%	33%

Column percentages do not always add up to 100 percent because of rounding. Sample sizes available for analysis shown in parentheses.

Source: Families and Work Institute, 1991

Further analyses were conducted to determine why some employers found implementation more difficult. Ten possible predictors of implementation difficulty were incorporated in a simultaneous multiple linear regression using unweighted sample data. The results of this exploratory analysis are presented in Figure 3.16.

The most powerful predictor was whether employers perceived negative effects on their managers' performance. When managers' abilities to handle their work responsibilities were judged to have decreased after the passage of state leave laws, employers reported more difficulty with implementation.

The second most powerful predictor was whether employers had experience with leave-taking after enactment of the state laws. Those who had experience found implementation significantly easier than those who had not.

The third most important were increases in administrative costs. Employers who perceived administrative costs to have increased because of state laws found implementation more difficult than those who perceived these costs to have remained the same or to have decreased.

The fourth predictor of implementation difficulty was a tight local labor market. Employers reporting that they had difficulty filling vacant positions during the preceding 12 months found implementation more difficult.

The final predictor identified in this analysis was whether or not employers complied with statutory leave requirements for biological mothers *prior* to the passage of state laws. Naturally, employers who were already in compliance found implementation easier. Other variables examined in the analysis—training costs, health insurance costs, percentage of female employees in firm, and company size—were not significantly related to implementation difficulty over and above other predictors.

Figure 3.16

Predictors of the Level of Difficulty That Covered Employers Experienced Implementing the Requirements of State Parental Leave Statutes[1]

(Sample Size = 844)

Predictors of Reported Difficulty	Nature of Relationship	Statistical Significance
Managers' ability to handle work responsibilities due to the statute's enactment	Employers who reported that managers found it more difficult to handle their work responsibilities found implementation more difficult	p < .001
Post-statute leave experience	Employers who had post-statute experience with employees taking leave found implementation easier	p < .01
Administrative costs	Employers who perceived increased administrative costs related to compliance reported that implementation was more difficult	p < .01
Tight labor market	Employers who reported difficulty filling vacant positions during the preceding 12 months found implementation more difficult	p < .01
Pre-statute compliance with law	Employers who were already in compliance with statutory leave requirements for biological mothers found implementation easier	p < .05

[1] This analysis was conducted using a simultaneous multiple linear regression on the unweighted sample of covered employers. Other predictors included in the analysis but not reaching statistical significance were: training costs, health insurance costs, unemployment insurance costs, percentage of female employees, and employer size.

Source: Families and Work Institute, 1991

Revisiting the Debate

Contrary to warnings, few employers found implementation burdensome, at least within the scope of laws passed by the four states included in this study. While some employers certainly experienced real costs and burdens, most did not. Difficulty in implementation is related to problems managing work responsibilities, reported administrative cost increases, and problems filling jobs. Ease in implementation is related to having had experience in compliance. Overall, the adverse effects of mandatory leave requirements on private sector employers, including smaller employers, were not at all severe. At the same time, the states of Minnesota, Oregon, Rhode Island, and Wisconsin have managed to guarantee basic parental leave benefits for all parents, biological and adoptive.

Did the enactment of mandatory leave benefits lead employers to reduce or eliminate other fringe benefits?

The Debate

Perhaps the direst warning issued by opponents of parental leave legislation was that employers would be compelled to reduce or eliminate other fringe benefits in order to contain costs. Most worrisome to proponents of parental leave has been the possibility that employees might lose important health insurance benefits in trade for improved leave benefits.

Figure 3.17 presents the percentages of covered employers, by state, who reported changing health insurance benefits "as a result of" state parental leave laws. Overall, 6 percent of employers stated that they had reduced benefit levels, while 85 percent reported no change and 8 percent claimed to have increased benefits. There was no significant difference among states.

Figure 3.17

Percentage of Covered Employers Reporting Changes in Health Insurance Benefits Related to Passage of State Laws

Reported Effects on Health Benefits	Covered Employers by State MN	OR	RI	WI	Combined 4-State Sample
% reducing health insurance benefits	8% (25)	10% (19)	3% (4)	3% (6)	6% (53)
% keeping health insurance benefits the same	84% (259)	81% (151)	89% (140)	90% (175)	85% (725)
% increasing health insurance benefits	8% (25)	10% (18)	8% (13)	8% (15)	8% (71)

Column percentages do not always add up to 100 percent because of rounding. Sample sizes available for analysis shown in parentheses.

Source: Families and Work Institute, 1991

Although employers in Rhode Island and Wisconsin, which require the continuation of employer contributions during the leave period, should have been most motivated to reduce health insurance benefits, employers in Minnesota and Oregon, which do not require continuation of employer contributions, were actually three times more likely to report reductions in benefit levels. As with self-reports of increased costs (above), this pattern of response raises some doubt about how clearly employers were able to differentiate changes in general, from changes that were specifically due to the passage of state parental leave laws.

Revisiting the Debate

Findings from this study do not indicate that employers are likely to reduce health insurance benefits to compensate for hypothesized increased costs related to the implementation of mandatory parental leave benefits. Job-related health insurance benefits have been eroding over the past decade, due not to parental leave requirements but to the rapidly escalating costs of insurance policies. The findings reported here would suggest that the incremental costs related to mandatory parental leave pale by comparison.

REFERENCES

1 Governor Thomas H. Kean, "The State's Role in the Implementation of Infant Care Leave," in E. F. Zigler and M. Frank, eds., The Parental Leave Crisis: Toward a National Policy (New Haven: Yale University Press, 1988).

2 General Accounting Office's Estimate of the Costs of the Parental and Medical Leave Act of 1987 (S. 249) (GAO/T-HRD-88-5, October 29, 1987).

3 E. Trzcinski and W. T. Alpert, Leave Policies in Small Business: Findings from the U.S. Small Business Administration Employee Leave Survey (Washington, D.C.: U.S. Small Business Administration, Office of Advocacy, October 1990).

4 General Accounting Office's Cost Estimate of the Family and Medical Leave Act of 1989 (H.R. 770) (GAO/T-HRD-89-4, February 7, 1989).

5 GAO, 1989.

CHAPTER IV: IMPACT ON PARENT EMPLOYEES

LEAVE-TAKING BY BIOLOGICAL MOTHERS

This section of the report examines leave-taking by biological mothers who worked for employers of the size covered by parental leave statutes in each state.

The Debate

Opponents of parental leave legislation have expressed differing views about the likely behavior of biological mothers in response to parental leave laws. On one hand, some have claimed that employers are already responsive to the needs of their female employees who bear children, thereby implying that little change in leave-taking behavior would be caused by passage of parental leave laws. On the other hand, other opponents have expressed great concern that women bearing children would take substantially longer leaves than they currently take, creating enormous costs and operational burdens for employers.

Proponents of mandatory leave benefits have generally assumed that more biological mothers would take leaves of absence following childbirth if their jobs were guaranteed by law. Proponents have also suggested that more generous leave benefits might encourage women to return to their pre-leave jobs, generating benefits for employers.

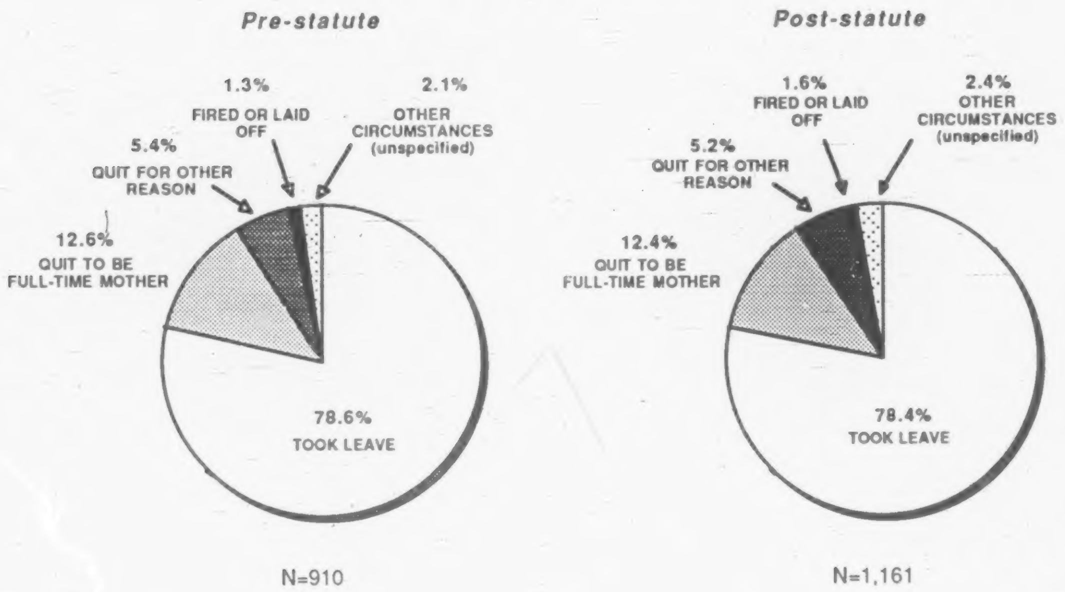
Were mothers more likely to take parental leave 6 to 12 months after the passage of state laws?

The proportion of mothers taking a leave of absence at the birth of a child did not change from the pre- to the post-statute period. As shown in Figure 4.1, 78.6 percent of mothers took parental leaves before the passage of state laws, compared with 78.4 percent afterwards.

Technical note: In evaluating impacts on parents, alpha was set at .05 so as to detect small, but potentially meaningful, effects based on comparisons of pre- and post-statute samples. ("$p<.05$" means that the difference among groups might have happened by chance less than five times in a hundred.) This decision reflects our confidence in the comparability of pre- and post-statute samples within states.

Figure 4.1

Biological Mothers Working for Covered Employers



Source: Families and Work Institute, 1991

Among women who did not take parental leaves following childbirth, most quit their jobs to become full-time mothers. The proportion of all women who made this decision was the same before (12.6 percent) and after (12.4 percent) passage of state laws. About 5 percent of mothers, pre- and post-statute, quit their jobs for other reasons, such as not liking their jobs or because their employer did not offer them part-time work.

Less than 2 percent of mothers, pre- and post-statute, were fired or laid off during pregnancy or after childbirth. While all of these women were effectively "denied leaves" for maternity-related disability and parenting, we do not know how many were legitimately fired or laid off for other reasons such as poor job performance. An additional 2 percent of biological mothers, who did not take leaves or resign, checked "other" on the questionnaire as a reason for not returning to work. Perhaps some of these women were denied parental leaves, but they may also have been left without leaves or jobs by virtue of business failure or relocation.

Revisiting the Debate

Very few biological mothers (less than 4 percent, maximum) were denied parental leaves prior to enactment of state parental leave laws. Passage of state laws, this study found, appears to have had little impact on access to leave benefits as of 6 to 12 months after enactment. The vast majority of women who did not take leaves of absence resigned from their jobs for reasons that had nothing to do with leave policies. These findings lend support to the position that most mothers do take leaves surrounding childbirth, whether or not there are policies permitting it or job guarantees.

Did mothers take longer leaves after parental leave statutes were enacted?

The average length of leaves taken for maternity-related disability and parenting by biological mothers did not increase with passage of state parental leave laws (Figure 4.2).

Figure 4.2
Comparison of Pre- and Post-statute Leave-taking Among Biological Mothers Working for Covered Employers

	Biological Mothers by State				Combined
	MN	OR	RI	WI	4-State Sample
Average weeks of leave taken *before* childbirth					
Pre-statute	1.5	2.6	2.9	1.4	2.0
Post-statute	1.6	2.7	2.6	1.8	2.0
	(186/236)	(141/199)	(144/140)	(241/326)	(712/901)
Average weeks of leave taken *after* childbirth					
Pre-statute	12.3	12.2	19.3	9.0	12.6
Post-statute	12.8	12.0	15.8	10.3*	12.1
	(192/238)	(145/207)	(145/140)	(243/333)	(725/918)
% of mothers taking fewer than 6 weeks of leave *after* childbirth					
Pre-statute	9%	18%	7%	9%	10%
Post-statute	4%*	19%	2%	6%	8%
	(192/238)	(145/207)	(145/140)	(243/333)	(725/918)
% of these who could have taken more time:					
Pre-statute	[State samples too small for analysis]				70%
Post-statute					86%*
					(71/71)
% of all leave-takers who could have taken more time					
Pre-statute	69%	69%	55%	60%	63%
Post-statute	63%	71%	67%*	65%	66%
	(203/247)	(150/227)	(166/157)	(245/339)	(764/970)

Significance of x^2 or t. *p<.05

Sample sizes available for analysis shown in parentheses (Pre-statute/Post-statute)

Source: Families and Work Institute, 1991

The average amount of leave taken *before* delivery was 2 weeks both before and after passage of state laws for women in the combined four-state sample. Although absolute pre- and post-statute differences were found within states, none of these differences reached statistical significance (even at p<.05).

The average amount of leave taken *after* delivery was 12.6 weeks prior to the enactment of state parental leave statutes and 12.1 weeks after enactment for women in the combined four-state sample. Only in Wisconsin was a significant difference (p<.05) found: biological mothers took an average of 9 weeks of leave before passage of the state's parental leave law, and 10.3 weeks after passage of the law.

Also reported in Figure 4.2 are the proportions of mothers who took fewer than the medically recommended 6 weeks of leave following childbirth. Although no statistically significant difference was found for the combined sample, the proportion of women taking fewer than 6 weeks of leave declined in absolute terms both overall and in three of the four states. The decline was statistically significant (p<.05) in Minnesota. If this trend continues, it would be an important consequence of the enactment of leave legislation.

Differences Among States

The obvious differences in the amount of leave after childbirth taken by biological mothers in the four states merit attention and, to the extent possible, explanation. Women who worked for covered employers differed significantly (p<.0001) among the four states with respect to the average length of post-childbirth leaves both before and after enactment of parental leave statutes. Biological mothers in Rhode Island took the longest leaves by far, both before and after the passage of state laws.* The proportion of mothers taking fewer than 6 weeks after childbirth also varied significantly (p<.0001) among the states, with Rhode Island mothers being the least likely to take fewer than 6 weeks both before and after the passage of state laws.

Although the fact that Rhode Island's statute granted the most generous leave benefit (13 weeks) might help to explain post-statute findings, it would not seem to account for the magnitude of the observed difference, and cannot explain why Rhode Island mothers took longer leaves before the state parental leave statute was enacted. However, further analyses of data from the four-state questionnaire, as well as consideration of other state laws affecting employers and employees, do suggest a reasonable explanation.

---

* Although the absolute difference between the amount of leave that women in Rhode Island took before and after passage of state laws is fairly large (see Figure 4.2), it did not reach statistical significance even at p<.05 due to the extremely high variance in lengths of leave taken in that state. Thus, from a statistical perspective, the pre- and post-statute averages for Rhode Island are not different.

Significantly ($p<.0001$) more biological mothers in Rhode Island (86 percent) than in other states—Minnesota (75 percent) and Oregon (64 percent)—received income from their jobs or temporary disability insurance while on leave. Further analysis revealed that 73 percent of women in Rhode Island reported income from temporary disability insurance while on leave, while only 21 to 29 percent of women in the other four states reported income from this source ($p<.0001$).

Rhode Island is the only state among those studied—and only one of five states in the nation—to require temporary disability insurance (TDI)[*] coverage of most employees. Since passage of the Pregnancy Discrimination Act (PDA) in 1978, TDI coverage has included maternity-related disability. Extending up to 26 weeks, contingent upon medical verification of disability, TDI payments provide partial wage replacement for all disabled workers, with a higher replacement rate for lower-income workers. The Rhode Island TDI plan, enacted in 1942, is administered by the state and financed by employee contributions[**] unless employers choose to provide coverage as a fringe benefit. In effect, Rhode Island grants *paid* disability leaves and, apparently as a consequence, working women in Rhode Island are more likely to take the medically recommended minimum leave for maternity-related disability and to take longer leaves on average than women in the other three states. Indeed, the average biological mother in Rhode Island takes a long enough leave to provide more than a month of post-disability time for parenting, which is what *parental leave* is all about.

Availability of Additional Time

Among mothers who took fewer than 6 weeks of leave following childbirth, the proportion reporting that their employers would have allowed more time off increased from 70 to 86 percent ($p<.05$) with the passage of state parental leave laws. However, these mothers either did not choose to, or could not, take advantage of even the minimum benefits guaranteed by state laws.

Among mothers in the combined four-state sample, a majority—63 percent pre- and 66 percent post-statute—reported that they could have taken more leave time if they had so desired. In Rhode Island, the proportion reporting they could have taken more time increased significantly from 55 to 67 percent ($p<.05$) with passage of the state's parental leave law.

---

[*] In 1991, Rhode Island TDI payment is calculated at 1 percent of employee's gross earnings up to a maximum of $25,300. Thus, the most an employee could contribute is $253.00 per year. The average Rhode Island employee contributes $198.12 per year ($3.81 per week).

[**] Three of the five states with TDI mandate employer contributions to the fund.

Leave Taken versus Leave Guaranteed

Considering only leave taken after childbirth, the average amounts of leave taken in the four states both before and after passage of parental leave laws equal or exceed the amounts required by statute—6 weeks in Minnesota and Wisconsin, 12 weeks in Oregon, and 13 weeks in Rhode Island.

Revisiting the Debate

These findings indicate that biological mothers, whether by policy or by individual negotiation with their employers, took more time off than the state laws require. On average, women in the four-state sample took a total of about 14 weeks of leave surrounding the birth of their children.

It should be remembered, however, that the parental leave statutes in the four states are modest in their requirements. This study does not tell us how biological mothers would behave if offered 26 weeks of job-guaranteed leave, the amount originally proposed in federal legislation, or if offered *paid* parental leave for longer than the period which may be covered by TDI, as is available in some industrialized countries.

One important aspect of biological mothers' leave-taking behavior may be changing as a result of parental leave legislation. In one of the four states, Minnesota, women were significantly less likely to take fewer than the medically recommended 6 weeks of leave following childbirth after passage of the state parental leave law guaranteeing at least 6 weeks of leave. The absolute proportions of women taking fewer than 6 weeks also declined (though not significantly) in two other states and for the combined four-state sample. As employers and female employees become more aware of the benefits guaranteed by state laws, further declines in leaves of fewer than 6 weeks could occur.

Finally, it should be noted that economics appear to play a significant role in women's leave-taking behavior. In Rhode Island, which essentially grants a paid disability leave to biological mothers by virtue of another state law requiring temporary disability insurance coverage for most workers, women take significantly longer leaves after childbirth. As families have grown increasingly dependent upon the earnings from mothers' employment, the issue of paid versus unpaid leaves for maternity has become important. An obvious next policy step is for states and/or the federal government to expand temporary disability insurance plans. In the five states that have them (New York, New Jersey, California, Rhode Island, and Hawaii), these plans are funded by employer or employee contributions, or both. The employee's contribution comes from payroll deductions. These plans all run in the black and have not been shown to cause an economic strain on employers or employees.

Were mothers more satisfied with the leaves allowed after passage of state laws?

The same proportions of biological mothers—a majority of 79 percent—were satisfied with the amount of parental leave they were allowed both before and after passage of state laws, and no differences were found among employees in the four states.

Revisiting the Debate

Though the majority of biological mothers are satisfied with the benefits they already have, significant numbers (21 percent in the four-state sample) want more leave time—more than laws in the four states studied grant or employers provide.

Were mothers aware of their parental leave rights under state laws?

Informing employers and employees of a new law affecting employee benefits presents a considerable challenge to states. Published, even posted, announcements do not ensure effective communication. As reported in Chapter III, many employers covered by the requirements of state parental leave statutes did not appear to understand their obligations under the new laws. Not surprisingly, many employees were also uninformed.

Among biological mothers in the combined four-state sample who gave birth after passage of state parental leave laws, only 54 percent were aware that such laws existed (Figure 4.3). The proportion who were aware ranged from 41 percent in Rhode Island to 69 percent in Oregon. The higher proportion in Oregon may be a result of the public education undertaken on this issue in the state.

Figure 4.3

**Awareness of State Parental Leave Laws
Among Biological Mothers Who Gave Birth When the Laws
Were in Effect and Who Worked for Covered Employers**

Awareness of Statute	Biological Mothers by State				Combined 4-State Sample
	MN	OR	RI	WI	
% of biological mothers (post-statute) who were aware of state parental leave laws at childbirth	58% (300)	69% (289)	41% (190)	47% (387)	54%* (1,166)
% of these mothers who were informed of law by their employers	42% (166)	66% (184)	54% (76)	41% (173)	50%* (599)

*x^2 significant at $p<.0001$

Sample sizes available for analysis shown in parentheses.

Source: Families and Work Institute, 1991

Among those who knew about the existence of parental leave laws in their states, only 50 percent in the combined sample reported that they had been informed of the law by their employers. The proportion who had been informed by their companies ranged from 41 percent in Wisconsin to 66 percent in Oregon.

Implications for States

Findings from both the employer and the employee questionnaires suggest that the state agencies responsible for monitoring parental leave, as well as business organizations and community advocacy groups, need to take more initiative in informing employers and employees of their respective obligations and rights.

What proportion of leave-takers returned to their pre-leave employers and pre-leave jobs?

The proportion of biological mothers in the combined four-state sample who returned to work for the same employer after their leaves was 85 percent before and after passage of state parental leave laws (Figure 4.4). The proportions returning to the same employer pre- and post-statute did not vary significantly (even at p <.05) across the four states.

Figure 4.4

Comparison of Pre- and Post-statute Return to Work
Among Biological Mothers Working for Covered Employers

	Biological Mothers by State				Combined
Return to Work After Leave	MN	OR	RI	WI	4-State Sample
% of mothers who returned to work for the same employer					
Pre-statute	88%	82%	76%	92%	85%
Post-statute	87%	79%	81%	90%	85%
	(217/275)	(174/259)	(193/172)	(263/369)	(847/1,075)
% of these mothers who returned to the same or a comparable job					
Pre-statute	96%	98%	94%	96%	96%
Post-statute	96%	94%*	97%	95%	95%
	(199/244)	(150/217)	(159/149)	(248/337)	(756/947)

Significance of x2: *p<.05

Sample sizes available for analysis shown in parentheses (Pre-statute/Post-statute)

Source: Families and Work Institute, 1991

A major provision of state parental leave statutes was the requirement that women taking parental leave be reinstated in the same or comparable job upon returning to work. However, passage of parental leave laws had no impact on rates of return to the same or comparable jobs in the combined four-state sample: 96 percent and 95 percent of mothers were offered the same or a comparable job upon their return in the pre- and post-statute periods, respectively. Although a significant (p<.05) difference between pre- and post-statute periods was observed in Oregon, it was in the opposite direction of what was expected. According to self-reports, fewer Oregon mothers were reinstated to the same or comparable job after passage of the state's parental leave law than before.

Revisiting the Debate

Within the time frame of this study, at least, guaranteed leave benefits did not promote higher rates of return to the pre-leave employers. Nor was there any evidence that legally required job guarantees improved leave-takers' chances of being reinstated in the same or comparable job upon returning. As the next section indicates, other factors do make a difference in decisions to return to pre-leave jobs.

What factors influenced mothers' decisions to take leaves and to return to their employers?

Since the enactment of state parental leave laws had no impact on biological mothers' decisions to take leaves of absence or return to their pre-leave employers, the question of what other factors may have influenced their decisions was addressed for the combined four-state pre- and post-statute sample of women who worked for employers covered by state laws.

To determine why some mothers chose to take leaves of absence and return to their pre-leave employers while others quit their jobs, ten possible predictors were examined using simultaneous multiple linear regression. The results of this exploratory analysis are presented in Figure 4.5.

Figure 4.5
Predictors of Decisions to Take Leaves and Return to the Same Job Among Biological Mothers Working for Covered Employers Before and After Enactment of State Laws
(Sample Size = 1,795)

Predictors of Return to Job	Nature of Relationship	Statistical Significance
Mothers' hourly earnings before birth	Mothers who earned more per hour were more likely to return.	p < .0001
Value placed on having paid employment	Mothers who placed higher values on paid employment were more likely to return.	p < .0001
Mothers' earnings as percent of household income before birth of child	Mothers whose families were more dependent upon income from their jobs were more likely to return.	p < .0001
Rating of family supportiveness in workplace	The more family-supportive the supervisor's co-workers and management prior to the mother's leave, the more likely women were to return.	p < .0001
Friends or relatives nearby who could help with baby	Women who had friends or relatives nearby who could take care of baby when help was needed were more likely to return.	p < .01

Variables examined but not reaching statistical significant at p<.05: maternal health complications related to pregnancy and delivery, child health complications, maternal education, and maternal occupation.

Source: Families and Work Institute, 1991

The single most powerful predictor of leave-taking and returning to the same employer was the amount of mothers' hourly earnings before giving birth. Women who earned more on an hourly basis, and who faced greater opportunity costs by not working, were more likely to take leaves of absence and return to their pre-leave employers. Two other indicators of opportunity cost—maternal education and maternal occupational status—were also predictive in bivariate analyses. However, these predictors were highly correlated with earnings and did not reach statistical significance in the simultaneous regression.

The second most powerful predictor was the value placed on paid employment by biological mothers. The more important having a paid job was to mothers' self-esteem, the more likely they were to arrange leaves of absence from their jobs and return once their leaves were over.

The third most important predictor was mothers' pre-birth earnings as a proportion of household income. Women who contributed proportionally more to household income were more likely to take temporary leaves and return to their jobs. This variable was incorporated in the analysis as an indicator of the economic necessity of mothers' paid employment.

Fourth, mothers who viewed their pre-leave employers as more supportive and accommodating of family needs were more likely to return to their employers after taking parental leaves. An index of workplace supportiveness was created, which included measures of supportiveness by supervisors and co-workers, as well as a global assessment of whether employees had to "choose between job advancement and devoting attention to their families."

The final significant predictor of leave-taking and return was the availability of social support from friends and relatives who lived nearby. Mothers who could rely on friends and relatives to take care of their babies if they needed help were more likely to take leaves of absence and return to work for their pre-leave employers than other women.

Maternal and child health factors were examined, but did not prove to be significant predictors in either bivariate or multivariate analyses. Even in a sample this large (n=1795), the impact of serious health problems and permanent disability is not detectable in sample statistics.

Did leave-taking vary in relation to household income?

In debates surrounding proposed parental leave laws, some have raised the question of whether women from lower-income households would take advantage of proposed unpaid leave benefits. Figure 4.6 summarizes the relationship between household income and leave-taking among women working for covered employers after passage of state parental leave laws.

Figure 4.6

Comparison of Leave-taking by Biological Mothers at Different Levels of Household Income Who Worked for Covered Employers During the Post-statute Period

— By Employer Size and Industry Type—

Leave-Taking Behavior Conditions and Attitudes	Biological Mothers by Household Income						Total Post-statute Sample
	Under $10,000	$10,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $59,999	$60,000 or More	
% of biological mothers (post-statute) who were aware of state parental leave laws	43% (49)	42% (92)	45% (159)	56% (225)	58% (392)	59% (193)	54%** (1,110)
% of biological mothers who took leaves	65% (51)	64% (88)	77% (159)	80% (227)	81% (393)	81% (191)	78%** (1,109)
% of biological mothers who returned to work for same employer	81% (42)	75% (80)	83% (151)	87% (209)	88% (360)	85% (182)	85% (1,024)
Average weeks of leave taken *before* childbirth[1]	3.5 (33)	2.7 (64)	2.1 (125)	2.4 (174)	1.8 (311)	1.4 (151)	2.0* (858)
Average weeks of leave taken *after* childbirth[1]	9.5 (34)	10.2 (62)	10.1 (129)	11.0 (180)	13.4 (316)	13.8 (154)	12.1** (875)
% of mothers taking fewer than 6 weeks after birth	21% (34)	11% (62)	12% (129)	7% (180)	5% (316)	7% (154)	8% ** (875)
% allowed more leave time than actually taken[1]	71% (35)	61% (70)	64% (138)	67% (188)	68% (329)	66% (167)	66% (927)
% satisfied with amount of leave allowed[1]	77% (35)	75% (69)	75% (138)	75% (194)	84% (334)	78% (162)	79% (932)
% in service and blue-collar occupations	67% (52)	50% (97)	45% (163)	40% (228)	22% (400)	17% (197)	32%**** (1,137)
% with income from job *or* temporary disability insurance	41% (37)	67% (75)	66% (140)	75% (194)	80% (338)	81% (165)	75%**** (949)
% covered by temporary disability insurance	16% (37)	41% (75)	23% (140)	33% (194)	35% (339)	36% (165)	33%* (950)
% with health insurance coverage on job	54% (37)	70% (73)	76% (138)	75% (194)	81% (336)	91% (166)	79%**** (944)
Earnings before childbirth as a % of household income	91% (47)	81% (91)	53% (157)	41% (226)	40% (398)	40% (194)	48%**** (1,113)

Significance of x^2 or *t*: *p<.05; **p<.01; ****p<.0001

Sample sizes available for analysis shown in parentheses.

[1] Only women who returned to work for same employer were included.

Source: Families and Work Institute, 1991

Several statistically significant findings suggest that women from lower-income households were, indeed, less likely than women from upper-income households to take advantage of leave benefits. First, women from lower-income households were less likely to be aware of their rights under the law. Second, they were substantially less likely to take leaves of absence than more affluent mothers. Third, when they did take parental leaves, they took less time on average than other women and much more frequently took fewer than the medically recommended minimum 6 weeks of leave following childbirth.

Findings presented in the bottom section of Figure 4.6 (above) may help to explain why women who live in lower-income households behave differently from women in higher-income households. First, the fact that lower-income women take more time off before childbirth is almost certainly due to the fact that they tend to work in more physically demanding service and blue-collar jobs. Women whose gross household incomes are less than $10,000 are much more likely (67 percent) to work in service or blue-collar jobs than women whose household incomes are $60,000 or more (17 percent).

Second, there are powerful economic reasons why women from lower-income households take less leave after childbirth. Not only are they less likely to know what benefits are available, they are also significantly less likely to receive income from their jobs (mainly accrued sick and vacation days) or from temporary disability insurance after childbirth. Moreover, they are much less likely to have health insurance coverage than women from higher-income households. Only 54 percent of women with gross family incomes of less than $10,000 had health insurance coverage related to their jobs, while 91 percent of women with household incomes of $60,000 or more were covered by job-related insurance plans. Finally, women from lower-income households contribute a much larger proportion of family income than women from higher-income households; consequently, they can much less afford to take unpaid time away from work. Women whose household incomes were less than $10,000 accounted for 91 percent of family incomes from their own earnings before childbirth. Even when household incomes ranged from $20,000 to $29,000, the contribution from the earnings of these women with lower incomes was 53 percent on average.

Rhode Island is the only state among those studied to require TDI coverage for employees. As previously discussed, biological mothers in Rhode Island less often took disability leaves of fewer than 6 weeks and took longer parental leaves on average than women in the other three states—presumably because they received partial wage replacement from TDI. Although sample sizes were small, further analyses were possible. The effects of TDI were evaluated, specifically on lower-income women (gross household incomes less than $20,000) who took leaves after childbirth. As with biological mothers in general, lower-income women in Rhode Island were significantly (p<.05) less likely (0 percent) to take fewer than 6 weeks than women in other states (19 percent). In addition, lower-income women in Rhode Island took significantly (p<.05) longer parental leaves on average (13 weeks) than lower-income women in the other three states (9.4 weeks). Indeed, the average weeks taken by lower-income women in Rhode Island exceeded the average leaves for *all* women (Figure 4.2) in Oregon (12 weeks) and Wisconsin (10.3 weeks)).

Revisiting the Debate

As predicted, women from lower-income households take less advantage of parental leave benefits than more affluent women. On the positive side, most women took at least the medically recommended minimum leave for maternity regardless of their socioeconomic status, which underscores the utility of basic leave benefits whether paid or unpaid. On the negative side, a significant minority of lower-income women took less than the minimum time recommended for disability, and few took enough leave to provide post-disability time for parenting. In Rhode Island, however, which mandates temporary disability insurance coverage to nearly all employees, lower-income women took parental leaves resembling those taken by middle-income women in the other three states. Temporary disability insurance essentially removes the major economic barriers to leave-taking for women from lower-income households.

LEAVE-TAKING BY BIOLOGICAL FATHERS

This section of the report examines-leave-taking by biological fathers—both husbands and unmarried partners—who worked for employers of the size covered by parental leave statutes in each state (Figure 4.7). Information about fathers' behavior was provided by their wives or partners.

The Debate

The opponents of parental leave legislation have expressed various opinions about the likely behavior of biological fathers in response to parental leave laws. Some have argued that fathers do not want extended leave benefits and will not use them. Others have expressed concern that fathers might take full advantage of parental leave benefits, causing problems for the workplace. In addition, some opponents argued that fathers would abuse their rights to parental leave, taking time off for recreational pursuits rather than parenting.

In contrast, proponents of mandatory parental leave benefits have expressed hope and belief that more fathers would take more time off to assume early childrearing responsibilities, given the legal right and social approval to do so.

Did the leave-taking behavior of fathers change after passage of state parental leave laws?

The findings summarized in Figure 4.7 suggest that the passage of state parental leave laws did have some impact on the leave-taking behavior of biological fathers. In the combined four-state sample, the proportion of fathers who took some time off after the birth of a child increased from 70 to 75 percent (p<.05) with passage of state laws. The increase in leave-taking among biological fathers was most notable in Rhode Island.

Figure 4.7
Comparison of Pre- and Post-statute Leave-taking Among Biological Fathers Working for Employers Covered by Parental Leave Laws

	Biological Fathers by State				Combined
Leave-taking Behavior	MN	OR	RI	WI	4-State Sample
% of fathers who took leave after birth of a child					
Pre-statute	73%	71%	70%	68%	70%
Post-statute	77%	72%	81%*	73%	75%*
	(276/338)	(287/429)	(244/187)	(340/441)	(1,147/1,395)
% of these fathers who took any unpaid time off:					
Pre-statute	20%	25%	16%	14%	19%
Post-statute	19%	29%	16%	22%*	22%*
	(204/264)	(212/315)	(179/155)	(245/320)	(840/1,054)
% of these fathers who spent leave caring for their wives/ partners and new babies:					
Pre-statute	98%	95%	99%	97%	97%
Post-statute	96%	100%**	99%	99%	98%
	(170/213)	(164/243)	(143/128)	(210/255)	(687/839)
Average workdays of leave taken					
Pre-statute	2.8	3.3	6.2	3.0	3.7
Post-statute	4.3*	5.5*	7.8	2.9	4.7
	(278/342)	(294/440)	(244/188)	(347/449)	(1,163/1,419)

Significance of x^2 or *t*: *p<.05; **p<.01

Sample sizes available for analysis shown in parentheses (Pre-statute/Post-statute)

Source: Families and Work Institute, 1991

While it is customary for new fathers to take a few of their accrued vacation or sick days to help out following childbirth or adoption, it is rare that they take unpaid leave—perhaps because they do not feel they can sacrifice the earnings from their jobs, because historically they have not been offered unpaid leave options, or because they received subtle pressure not to make their family commitment obvious to their employers by using parental leave policies. Among fathers in the combined four-state sample who took some time off, there was a slight increase (p<.05) in the proportion (19 percent to 22 percent) who took unpaid leave days. The increase was largest in Wisconsin, where the proportion of fathers taking unpaid leave increased significantly from 14 to 22 percent after passage of the law.

While in absolute terms the amount of time taken off by biological fathers increased from 3.7 days pre- to 4.7 days post-statute, this change did not reach statistical significance. However, marginally significant (p<.05) increases were observed in two states—Minnesota (2.8 to 4.3 days) and Oregon (3.3 to 5.5 days). Nevertheless, the amount of leave taken by biological fathers fell far short of the leave benefits available to them under state laws.*

Virtually all fathers (97 percent pre- and 98 percent post-statute) who took time off from work after the birth of their children spent that time assisting their wives or partners or caring for the baby rather than pursuing their own interests. In Oregon, where some opponents of the leave bill had suggested that fathers would abuse the law by going "elk hunting" instead of caring for their wives and children, the proportion of fathers who spent their time in nurturing roles increased significantly (p<.01) from 95 percent in the pre-statute period to 100 percent in the post-statute period, according to mothers' self-reports.

Revisiting the Debate

Findings from the study indicate that state parental leave laws did affect the leave-taking behavior of fathers, albeit modestly. More fathers took some time off; more took unpaid leave days and, in two states, fathers significantly increased the amount of leave they took. Nearly all fathers who took leaves, even before the passage of state laws, did so to care for their babies, rather than to pursue personal interests. Despite the absence of much room for change, the proportion of Oregon fathers taking leaves to assist their wives or partners after the birth of a new baby increased significantly from 95 to 100 percent following passage of the laws.

---

* This statement must be qualified for Oregon. In Oregon, according to the most recent enforcement decision, if at least one parent works for a covered employer, the two parents must split the 12 weeks granted by statute into non-concurrent parts, unless their employers agree to other terms.

CHAPTER V: ENFORCEMENT

There are different ways to assess the impact of parental leave legislation on employers and employees. One approach is to monitor the number and nature of grievances filed. *The State Parental Leave Study* followed the enforcement process in each of the four states in order to identify the aspects of the legislation that seemed to cause the most problems, possible reasons for these problems, and lessons that could be learned from experiences in these states.

Who Enforces the Legislation?

In Minnesota, the statute does not grant or assign enforcement authority to a specific state agency. As John Fossu, an official in the Minnesota Department of Human Rights, states, there is no *formal* enforcement of the law in Minnesota. In other words, there is no one state agency from which employees can get help in filing a complaint, securing legal representation, or inquiring about the specifics of the statute. Thus, employers or employees who have complaints must use the private legal system. The Department of Human Rights, the Department of Labor and Industry, and the Commission on the Economic Status of Women all receive telephone inquiries from employees regarding the length of leave and complaint filing process. Most of these calls are from female employees.

In Rhode Island, only four complaints about family leave have been filed with the Department of Labor's Labor Standards Division, the designated enforcement agency. One possible reason for this extremely low number is that mothers in Rhode Island were the least aware of the statute's existence. As discussed in Chapter III, only 41 percent of the Rhode Island mothers were aware of their new rights, compared with 69 percent in Oregon, 58 percent in Minnesota, and 47 percent in Wisconsin.

It is telling that of the four states, only two—Wisconsin and Oregon—have worked actively to enforce their bills. Both states included details of the enforcement process in the text of their statutes. Furthermore, officials in Wisconsin and Oregon have spent a great deal of time and effort on the regulatory process, establishing the administrative rules for statute implementation and enforcement. Each drafting of an administrative rule, each complaint filed, and each case heard in administrative hearings and circuit courts has added knowledge and insights about the implementation and enforcement of the statute in Wisconsin and Oregon. This chapter examines these states' experiences.

WISCONSIN

The Wisconsin bill became law on April 15, 1988. As previously stated, Wisconsin Act 287 requires both public and private employers with 50 or more permanent employees to provide an unpaid 6-week leave for the birth or adoption of a child; a 2-week unpaid leave for the serious health condition of a child, spouse, or parent; and a 2-week unpaid leave for an employee's own serious health condition. These provisions are commonly referred to as parental leave, family leave, and medical leave, respectively.

After the passage of the Wisconsin statute, preliminary rules were proposed by the Department of Industry, Labor and Human Relations (DILHR), the enforcement agency for public and private sector employees.* A series of statewide public hearings on these rules was held through the end of 1988. Using the input from these hearings, DILHR issued final regulations in November 1989. These are set forth in Wisconsin Administrative Code, Chapter Ind. 86.

Under the statute, DILHR's Equal Rights Division (ERD) has the jurisdiction to resolve disputes surrounding the family and medical leave statute. Employees who believe they have been denied leave to which they are entitled, or have been penalized or retaliated against for taking a leave, are given 30 days to file a complaint with the ERD: "30 days after the violation occurs or the employee should reasonably have known that the violation occurred, whichever is later." The onus is on the employer to make entitlements known. If an employer has not posted the required notice about the new law, then it is considered that an employee could not "reasonably have known" that a violation occurred until either the first date that the employer posts a notice or the first date that the employee "obtains actual knowledge of the information required in the notices."

Once a complaint has been filed, an ERD investigator determines whether the complaint justifies review and, if so, conducts a preliminary investigation. The investigator can subpoena persons or documents and can also attempt to resolve the complaint by conference and written conciliation. Within 60 days after the complaint is filed, an administrative hearing, presided over by an administrative law judge, must be held. ERD should make an initial decision as to "probable cause" before the expiration of the 60-day deadline. "Probable cause" refers to a reasonable ground for a belief that an action prohibited by the statute probably has been or is being committed by the respondent.

To date, 273 complaints have been filed with ERD by employers and employees. Ninetyeight women and 63 men were complainants regarding family leave (which includes parental leave in ERD's data collection system). Family leave was also the basis of 76 administrative decisions involving an administrative hearing. Twenty-two of these 76 decisions resulted in findings of violation. In these cases, the employer was required to pay the employee's back pay, interest on the back pay, and attorney's legal fees, as well as to make any necessary adjustment in the employment situation (e.g., reinstate the employee terminated).

---

* Complaints filed by state employees are processed by the Wisconsin Personnel Commission.

Six decisions resulted in a new finding of "no probable cause," and one was found to remain "no probable cause." In these cases, complainants had the right to appeal. Thirty-one cases were settled, five were withdrawn, and 10 were administrative closures because the complainants did not pursue an administrative hearing.

Major Issues In Complaints

Two issues have become special concerns for both employers and employees: 1) whether paid leave such as accrued vacation, sick leave, or compensatory time may be substituted during the parental leave—commonly referred to as "the substitution provision" and 2) the definition of a serious health condition. The following section discusses these issues, highlighting the most significant court cases.

Substitution of Other Accrued Leave for Parental Leave

A frequently contested issue in states with parental leave statutes is the substitution of other accrued paid leaves provided by the employer during the time the employee is taking a statutory parental leave. In Wisconsin, this issue has been particularly troublesome to employers. The Wisconsin statute reads:

> SECTION 2 103.10
>
> (5) PAYMENT FOR AND RESTRICTIONS UPON LEAVE
>
> (a) This section does not entitle an employee to receive wages or salary while taking family leave or medical leave.
>
> (b) An employee may substitute, for portions of family leave or medical leave, paid or unpaid leave of any other type provided by the employer.
>
> Wisconsin Act 287

DILHR's revised rules, approved for adoption and enacted on September 27, 1989 by the Joint Committee for Review of Administrative rules and activated in November 1989, provide:

> At the option of the employee, an employee entitled to family or medical leave under the Act may substitute, for any leave requested under the Act, any other paid or unpaid leave which has accrued to the employee.
>
> The employer may not require an employee to substitute any other paid or unpaid leave available to the employee for either family or medical leave under the Act.
>
> Ind. 86.03(1) and (3)

Employers and employer associations were concerned with DILHR's regulation and have challenged it on several grounds. They believe that DILHR's interpretation extended the substitution provisions beyond the scope of the statute's intent. John C. Metcalf, Director of Human Resources Policy for the Wisconsin Manufacturers and Commerce Association (WMC), explains:

> *... the administrative rules implementing the Wisconsin [statute] have been interpreted to extend the substitution provisions beyond the scope of what employers generally felt was the intent of the statute. The administrative rules interpretation permit the worker to substitute statutory leave for employer-provided leave of any type accrued. The rules interpretation do not, however, require that the leave be similar nor that the worker be otherwise eligible to take the leave—requirements we believe would be both fair and reasonable.*[1]

Employers' associations such as WMC are concerned that DILHR's interpretation of substitution of leave could generate unanticipated fiscal problems for both public and private sector employers. In addition, employers and employer associations assert that the regulation interferes with binding and enforceable collective bargaining agreements specifying exactly when an employee is eligible for a particular employer-provided leave.

The case that brought this issue into Wisconsin's circuit courts involved a male employee of Richland School District, James Ruder, who requested parental leave for the adoption of a child. While Ruder was granted unpaid leave by his employer, he was denied the right to substitute accrued reimbursable leave since this was not included in the collective bargaining agreement between the Wisconsin Education Association Council and Richland County School District. Ruder filed a complaint with DILHR, alleging that Richland County School District had violated the statute. At ERD's administrative proceeding, ERD Case No. 8901271 (Sept. 8, 1989), the Administrative Law Judge ruled that the employer had violated the statute by denying substitution of the paid leave pursuant to the substitution provision in the law. According to this decision, Ruder was permitted to substitute employer-provided sick leave for the parental leave provided under the statute.

Richland School District, dissatisfied with this ruling, appealed. The Wisconsin Circuit Court ultimately affirmed DILHR's ruling in *Richland School District v. DILHR ERD & Ruder,* Case No. 89-CV-107 (April 20, 1990). The Richland County Circuit Court found "no ambiguity or vagueness in the statute or DILHR's administrative rules." In addition, the Court also reviewed the legislative history of the statute and found "that the State Legislature had intended to permit the employee the options [to substitute accrued paid leave]." Richland School District officials have appealed the case to a higher court.

The public as well as the private sector has been testing the substitution provision. Following the law's enactment, the City of Milwaukee was uncertain how its prior contracts and employer policies should be applied to the terms of the new statute. Several city departments had required that employees use up their accrued paid vacation before being granted unpaid leave, a policy that had been in place for years before passage of Wisconsin's family and medical leave statute in 1988. When the City recognized that it was covered by the statute, it contested the substitution provision, as did other employers in the state—specifically employees' right to substitute accrued paid *sick leave* for the statutory family or medical leave.

Again, the debate around substitution was played out in ERD. On June 6, 1990, a Department of Public Works employee, George Najera, filed a complaint with ERD, claiming that the City refused to pay him 2 weeks accrued sick leave pay for a parental leave of 10 days to care for his newborn son. As in *Richland*, the City approved his request for parental leave but denied him the right to substitute his accrued sick leave for the parental leave. The reason for the denial was related to the fact that the City's policy specified that sick leave was available only for employee's personal illness or injury.

On August 21, 1990, Administrative Law Judge Alice DeLao ordered the City to pay Najera sick leave for the 10 days of parental leave. She ruled that the substitution provision's language in both the statute and DILHR's administrative rules did not restrict the type of paid leave that an employee may use to substitute for his or her statutory family or medical leave. ERD Case No. 9051486 (Aug. 21, 1990).

After this ruling, the City of Milwaukee adopted a written policy allowing only partial employee substitution rights. The policy states that while employees can substitute vacation, earned floating holidays, and any earned compensatory time for the statutory unpaid leave, they cannot substitute paid sick leave for any purpose other than illness. A final decision on their new policy is forthcoming; at present there are 26 cases involving the substitution of accrued sick leave for family leave pending against the City.

Several unions representing city workers, such as the American Federation of State, County, and Municipal Employees (AFSCME), have declared that they will attempt to get clauses included in their next contract with the City, which would both explicitly clarify substitution rights and mandate the initial handling of complaints through the union's grievance process rather than through ERD or the judicial system. However, in the 1991–1992 contract negotiations, AFSCME was not able to insert such language into the contract. AFSCME officials are now awaiting the resolution of the 26 pending cases.[2]

Use of Other Accrued Leave Consecutively

A related issue, commonly referred to as "stacking," has also arisen in Wisconsin. It concerns the employee's right to *add* (rather than substitute) the parental leave required by law to other forms of paid leave, such as vacation, sick, or personal leave. The statute does not explicitly prohibit this, so an employee is technically allowed to extend the leave to longer than 6 weeks. But DILHR, in its administrative regulations, explicitly allowed employees to extend the leave with other accrued leave only under certain conditions:

> CONSECUTIVE LEAVE
>
> If any employee chooses to utilize leave provided under S.103.10(3) or (4), Stats., the employee may not extend leave taken by adding leave of any other type provided by the employer, unless:
>
> (1) The employee meets the employer's requirements for taking the other leave which are in effect for all employees; or
>
> (2) The employer consents to the extension.
>
> Ind. 86.031

The stacking issue was addressed in *Kailas v.West Bend School District*, ERD Case No. 9051575 (Sept. 13, 1990). In this case, Sharon Kailas informed her employer, West Bend School District, of her intention to take statutory leave *after* taking all of the sick and vacation time she had accrued under the collective bargaining agreement by which her employer was bound. The employer denied her statutory leave, claiming that leave under the statute and leave under the collective bargaining agreement run *concurrently*. The Administrative Law Judge decided in her favor, leading to the conclusion that, as a matter of law in Wisconsin, statutory leave may run *consecutive* to paid leave accrued under a collective bargaining agreement. The case was not appealed, and West Bend School District is in compliance.

Few cases relating to the stacking issue have come before the courts. Susan Brehm, an attorney with the Center for Public Representation in Madison, surmises that there are two explanations for that: few employees are aware that they are technically eligible to extend their leave period, and they may feel pressure to return to work as quickly as possible for economic reasons and/or because of company culture.[3]

Wisconsin State Senator John Plewa, the original sponsor of the Wisconsin statute, anticipates that the debate surrounding the substitution provision will continue to be adjudicated in the courts. The issue is also being discussed in the state legislature. Senate Bill 117, introduced by Senators Roshell, Leean, Buettner, Berndt, and Kreul on March 14, 1991, is currently before the Committee on Agriculture, Corrections, Health, and Human Services. This bill would repeal the statute's substitution provision unless it was specifically included in a collective bargaining agreement or available by employer consent, thus denying employees the statutory right to substitute paid leave for family or medical leave.

Definition of "Serious Health Condition" for Family Leave

The parental leave bill of Wisconsin (and Rhode Island) includes leave for the "serious health condition" of family members. This section of the statute is commonly referred to as family leave. The definition of "serious health condition" has been problematic in the proposed federal bills and in the enacted state bills. Wisconsin's statutory definition reads:

> SECTION 2 103.10
>
> (g) "Serious health condition" means a disabling physical or mental illness, injury, impairment or condition involving any of the following:
>
> 1. Inpatient care in a hospital, as defined in §50.33(2), nursing home, as defined in §50.01(3), or hospice.

2. Outpatient care that requires continuing treatment or supervision by a health care provider.

Wisconsin Act 287

The leading case in Wisconsin on the allowance of leave to care for the serious health condition of a child is *MPI Wisconsin Machining Division v. DILHR Equal Rights Division and Schimmel*. Case No. 89-CV-306 (Feb. 12, 1990). Dawn Schimmel had taken 2 days and part of one day off from work at MPI Wisconsin Machining Division to care for her son, daughter, and herself for what she felt were serious health conditions (her own bronchitis attack, her daughter's fever and dehydration, and her son's head concussion). In all three instances, Schimmel sought treatment at a local hospital's emergency room. Her daughter's illness required overnight hospitalization. Upon her return to MPI following each absence, she was given penalty points under MPI's Absence and Lateness Policy.* She was subsequently discharged for accumulating too many of these points during a 6-month period. She filed a complaint with ERD, alleging that her termination was illegal because she was entitled to the time off from work to take care of her children and herself under the family and medical leave legislation.

DILHR decided in her favor, holding that she had legitimately taken leave under the statute and that penalty points were wrongfully assessed because all three absences were "serious health conditions" covered by the statute. ERD Case No.8900664 (June 15, 1989). Consequently, her termination was found to be illegal. MPI, however, appealed and the Jefferson County Circuit Court judge overruled DILHR's finding because he felt the statute "was not enacted to encompass emergency situations" but only "serious health conditions," which he interpreted as involving lengthy disablements. Case No. 89-CV-306 (Feb. 12, 1990).

With the assistance of the Center for Public Representation, Schimmel appealed the case. Case No. 90-0844 (Nov. 27, 1990). The Wisconsin Court of Appeals, District III, reversed the Circuit Court's judgment by ruling that Schimmel's absences to care for her son and daughter were indeed family leaves protected under the Wisconsin statute. It was decided, however, that her absence for her own illness did not fall within the scope of the bill because it did not call for "continuing treatment or supervision by a health care provider."

The Enforcement Role of DILHR

Richard Briles Moriarty, the former Director of the Legal Services Bureau of DILHR's ERD and current Assistant Attorney General, spent a great deal of time meeting with the citizens of Wisconsin, explaining the statute and DILHR's regulations, and providing guidance to employers.* DILHR has been especially careful to involve both employers and employees, and the Department has so far adjudicated claims within the time frames set out in the statute. The Center for Public Representation reports that the average time between the filing of a complaint and the completion of the investigation has been 27 days, with a range of 12 to 45 days.

---

* MPI's Absence and Lateness Policy penalizes employees with two points for leaving work early without prior approval, regardless of the reason for absence. Employees are penalized three points for absence without prior approval, regardless of the reason.

Future Issues

It is clear that there are still issues outstanding in Wisconsin that will continue to be pursued in administrative proceedings (including judicial review), in the state circuit courts, and in the state legislature. It is thought that there may be future activity around two additional issues: 1) partial absence—the regulations permitting an employee to take partial leave in small increments of less than a day, but only if the employer allows any other leave to be taken in that way; and 2) continuation of employer's contribution to health benefits, specifically the use of escrow accounts.

The statute and regulations require employers providing health insurance to continue their contributions during parental leave. Since employers do not want to pay the health premiums for an employee who decides while on leave to quit, the law stipulates that employers *may* require employees to pay the full premium into an interest-bearing escrow account for up to 8 weeks. Employers must give their employees 12 months to pay in this amount. The account is kept by the employer. If the employee terminates employment within 30 days after returning from leave, the employer can deduct the costs for health insurance coverage during leave from the escrow account.

The cost of putting the full premium into an escrow account could be prohibitive for many employees. Perhaps for this reason or perhaps because so many employees return to their jobs, or perhaps because the procedures can be cumbersome, there is no clear evidence whether these escrow accounts are being used or, if used, whether they are being used properly. Leanna Ware, ERD Program Supervisor, observes that many employers perceive escrows as too administratively complicated to use.[4]

---

* Despite these efforts, *The State Parental Leave Study* found that only 47 percent of eligible mothers in Wisconsin were aware of the law at the time of childbirth, and only 41 percent of these mothers who knew about the statute were informed about the law by their employers.

OREGON

The Oregon parental leave statute became effective on January 1, 1988. The bill, sponsored by the Governor's Commission on Child Care, provides 12 weeks of unpaid parental leave for the birth or adoption of a child. Family leave is not included. The statute covers all businesses with 25 or more employees. The Bureau of Labor and Industries (BOLI), the enforcement agency specified in the statute, estimates that the law affects over 550,000 private sector employees and all of the state's public sector employees. On January 1, 1988, BOLI began its enforcement of ORS 659.360, drafting and adopting administrative rules necessary for implementing the statute.

Employees may file complaints with BOLI's Civil Rights Division, which is given broad enforcement powers under the statute. According to the Division, 30 complaints have been filed solely on the basis of parental leave since the law took effect. Sixteen of the complaints were filed by women and 14 by men. Of the 30 cases, 8 were settled for amounts ranging from $500 to $11,597. Of the remaining cases, 3 were settled privately, 3 were closed, 8 withdrew, and 8 are pending at some stage of the process. In addition, 42 complaints were filed—37 by women and 5 by men—in which parental leave was one of several bases for filing.

Major Issues and Complaints

While each case is unique, two issues that surfaced in Wisconsin have also arisen in Oregon. In addition, a third issue has emerged. These three issues are: 1) the substitution of accrued leave, 2) the definition of covered employers, and 3) restoration of employees to equivalent positions upon their return from leave. The debate around all three issues was illustrated in one case, *Oregon Bankers Association v. Oregon Bureau of Labor and Industries.* Appellate Court Case No. A50241 (July 25, 1990). In this case, the petitioners were Oregon trade associations such as Oregon Bankers Association, Associated Oregon Industries, Inc., Oregon Retail Council, and the Oregon Credit Union League.

Utilization of Other Accrued Leave

As in Wisconsin, the utilization of other accrued paid leave during the parental leave period has been problematic in Oregon. The Oregon statute reads:

> (3) The employee seeking parental leave shall be entitled to utilize any accrued vacation leave, sick leave or other compensatory leave, paid or unpaid, *during* [emphasis added] the parental leave. The employer may require the employee seeking parental leave to utilize any accrued leave during the parental leave unless otherwise provided by an

> agreement of the employer and the employee, by collective bargaining agreement, or by employer policy.
>
> ORS 659.360 (3)

> The parental leave required by subsection (1) of this section is *not* [emphasis added] required to be granted with pay unless so specified by agreement of the employer and employee, by collective bargaining agreement, or by employer policy.
>
> ORS. 659.360 (6)

BOLI's administrative regulations on this provision are stated as follows:

> (1) The statute anticipates unpaid parental leave, but gives the employee the right to use accumulated leave of any kind. It also provides that the employer may require the parent to use accumulated leave in accordance with a bargaining agreement or established policy. Use of leave is subject to OAR 839-07-865.
>
> (2) Nothing in these rules shall be construed to prohibit an employer from granting more parental leave, paid or unpaid, than is required by ORS 659.360.
>
> OAR 839-07-850 (1) and (2)

BOLI thus argued that the statute, in implementation, does permit an employee on leave to use other types of accrued leave, even though an employee may not have satisfied the requirements for such usage as specified by employment agreement, collective bargaining agreement, or employer policy.

Employers and employer associations such as Associated Oregon Industries, dissatisfied with the broad interpretation of substitution, have challenged BOLI on this issue. In *Oregon Bankers*, the petitioners argued that the statute allows an employee on parental leave to use other types of accrued leave *only to the extent* authorized by an employment agreement, collective bargaining, or employer policy.

Debate on this subject had surfaced in Oregon even before the briefs were submitted. In August of 1988, Oregon Attorney General Dave Frohnmayer issued an opinion that BOLI has misinterpreted the utilization provision. Op. Atty. Gen. No. 8195 (August 18,1988). In his opinion, Frohnmayer stated that an employer need not grant unused sick leave or other compensatory leave in lieu of parental leave if the employer policy explicitly states that only employees who are themselves ill can use sick leave. In other words, the opinion states that employees cannot apply other benefits for which he or she would not otherwise be eligible.

The State Court of Appeals in *Oregon Bankers* upheld BOLI's administrative rule, stating, "On its face, the challenged rule does nothing more than paraphrase the statute. It is not contrary to legislative intent." However, the Court of Appeals ruled that the Court could only analyze the validity of the rule as written, rather than as applied in a particular case. In this way, the Court left the question open until an employee was specifically denied the right to substitute accrued paid sick leave for unpaid parental leave.

One such case, *Portland General Electric Company v. Mary Wendy Roberts, Commissioner, Bureau of Labor and Industries*, Case No. A51280, is currently on appeal in the Oregon Court of Appeals. This case closely parallels *Richland* and *Najera* in Wisconsin. The original petitioner, PGE employee Joseph E. Clague, requested 12 weeks of parental leave and asked to be paid for 9 weeks and 2 days of his parental leave time with accrued sick leave. As in *Richland* and *Najera*, PGE approved the 12 weeks of parental leave, but declared that the use of sick leave was not in accordance with its collective bargaining agreement. In other words, PGE declared that it was not required to allow its employees to take paid sick leave in the form of parental leave when they were not sick. Clague amended his request to 10 weeks of parental leave, 7 weeks and 2 days of which were unpaid.* However, he filed a complaint with BOLI's Civil Rights Division.

On December 28, 1988, the Commissioner ruled in Clague's favor, finding that PGE's denial violated ORS 659.360 (3), and thus was required to pay Clague $5,861.84. This figure represented 9 weeks and 2 days, or 376 hours, of paid sick leave, to be deducted from Clague's accrued sick leave. PGE was also required to pay Clague $2,000 for mental anguish and distress. The Commissioner held:

> *The Agency [BOLI] asserts that the intent of the unambiguous language of subsection (3) of ORS 659.360 is restated in OAR 839-07-850 and gives the employee-parent the right to use accumulated leave of any kind during the parental leave.*

The Commissioner's order emphasized that the Legislature had specifically qualified statutory rights when it intended collective bargaining or other private agreement to supersede the statute. Subsection (3) of ORS 659.360 contains no such qualification of the right to use accrued paid leave; only the employer's right to compel the use of accrued paid leave is so limited.

The Commissioner also rejected PGE's argument that BOLI's own rules required that the use of sick leave be governed by the conditions set out in PGE's collective bargaining agreement. OAR 839-07-805 (2) defines "sick leave" and provides that collective bargaining agreement shall determine "eligibility for . . . and . . . accrual of" sick leave. The Commissioner held:

---

* The remainder of the requested leave was paid with accrued vacation and elective surgery sick leave.

> *The crux of [PGE's] argument is that 'eligibility' for sick leave under the rule is somehow synonymous with the 'use' or, in the words of the statute, the 'utilization' of sick leave. * * * [T]he Respondent's own collective bargaining agreement and written policies distinguish the terms 'eligible,' 'accrue' and 'use.' All three are used, for example, in obvious different ways in [PGE's] agreement: * * * OAR 839-07-805 (2) anticipates the common use in employment agreements of benefit eligibility requirements and accrual formulas. The Respondent's [agreement] is typical of such contract terms. The effect of the rule is to leave these terms undisturbed, and it is intended to assure employers of both continuity and flexibility in the structuring of employee benefit plans. The manifest purpose of the rule is not, as the Respondent would have it, to undo what the Legislature has done and to deny to employees by private agreement or policy the unqualified statutory rights to utilize 'any accrued . . . sick leave.' ORS 659.360 (3).*

Portland General Electric appealed this ruling, arguing that the Commissioner had erred in concluding that the statute entitles employees to take paid sick leave as part of parental leave even when the employee is not "sick" as defined by employer agreement or company policy. PGE argues that Oregon law allows employers to determine through employment policies or collective bargaining agreements the availability of sick leave benefits and the conditions for their use: "An employee is entitled to sick leave only if that benefit is provided for by employment agreement, by collective bargaining agreement, or by employer policy." PGE therefore asserts that Clague was entitled to use his sick leave only when he was ill, since "sick leave at PGE is true sick leave, to be used only when disability due to sickness occurs." Thus, PGE maintains that the Oregon parental leave statute requires only *unpaid* parental leave and does not otherwise alter the terms of employment agreements nor require employers to confer *paid* leave to which employees are not otherwise entitled.

Definition of "Covered Employer"

According to the BOLI's regulations, a "covered employer" is an "employer with 25 or more part-time or full-time employees in Oregon on the day before the first day of the parental leave of absence." This definition has become particularly problematic when the leave is split between two parents. Both the statute and BOLI's administrative regulations state that if two parents who work for covered employers want to share the leave, the maximum combined leave available for both parents shall be 12 weeks.

In *Oregon Bankers,* the petitioners challenged both the definition of "covered employer" and the length of leave due a dual-career couple. As mentioned above, the statute allows an employer to offset the amount of parental leave an employee takes by the amount of parental leave taken by the other parent, if that other parent is "also employed." The petitioners interpreted the statute to allow an employer to offset the parental leave that one parent takes under the statute by the amount of parental leave that the other parent takes, regardless of whether the other parent works for a "covered employer."

BOLI, in contrast, argued in its brief that the statute's notification procedures—by which employees give their employers a proposed parental leave schedule—require that both employers be subject to the statute. It also argued that it would lack the power of enforcement over the employer not required to provide parental leave under the statute (i.e., a business with fewer than 25 employees). Finally, BOLI argued that the court should construe the term "parental leave" to mean "statutorily-mandated parental leave."

The Court of Appeals in *Oregon Bankers* agreed with the petitioners, holding that:

> *The Statute applies to the other parent if that other parent is "also employed." On its face, the statute requires only that the other parent taking parental leave be employed by some employer, not just by an employer to which the statute applies. The legislature could have inserted a modifying phrase, such as "employed by an employer covered by this statute," if that had been its intent. It did not.*

Thus, as currently interpreted in Oregon, requirements regarding the division of parental leave can be applied if at least one parent works for a "covered employer."

Reinstating the Employee to an Equivalent Job After the Leave

The third prominent issue concerns the duration of the employer's obligation to reinstate an employee who returns from parental leave. The relevant portion of the statute reads:

> SECTION 2
>
> (8) Upon the termination of the parental leave of absence of the employee under this section, an employee shall be restored to the former or an equivalent job without the loss of seniority, vacation credits, sick leave credits under a pension plan or any other employee benefit or right which had been earned at the time of the leave of absence but reduced by any paid leave that the employee used during the parental leave of absence. Benefits are not required to accrue during the parental leave of absence unless accrual is required under an agreement of the employer and the employee, a collective bargaining agreement, or an employer policy. If the employer's circumstances have so changed that the employee cannot be reinstated to the former or equivalent job, the employee shall be reinstated in any other position which is available and suitable. However, the employer is not required to discharge any employee in order to reinstate the employee to any job other than the former or equivalent job unless required by an agreement of the employer and the employee, by collective bargaining agreement, or by employer policy.
>
> ORS 659.360(8)

The BOLI regulation provides:

> The parent is not required to accept a job which is not suitable when offered under section (6) of this rule. If the employer has no suitable position available or if a parent refuses an unsuitable job, the employer has not met its obligation under ORS 659.360 and the employer must offer a suitable job, or the former or an equivalent job, whichever is the first available.
>
> OAR 839-07-860 (8)

The challengers in *Oregon Bankers* argued that the obligation to reinstate exists only at the moment when the employee seeks to return to work. In other words, the petitioners claimed that if no position is immediately available at that time, the employer's obligation is met. BOLI, in contrast, argued that, in this situation, the employer's obligation still continued.

The Court of Appeals in *Oregon Bankers* agreed with BOLI, upholding that "the statute creates an absolute obligation on an employer to reinstate an employee to any position that is available and suitable, if it is impossible for the employee to return to the employee's former or equivalent position." The decision referred to *Spurgeon v. Stayton Canning Company Cooperative, Inc.*, 92 Or. App. 566 (1988), a previous case involving the reinstatement of an employee with compensable injury. This case held that "employer's obligation continues until the employee is reinstated or right is otherwise extinguished."

BOLI and Enforcement

Most policymakers give Labor Commissioner Mary Wendy Roberts good marks for her enforcement of the statute in Oregon. The statistics on public awareness of the statute support this judgment. Of all four states, Oregon had the highest level of statute awareness among childbearing mothers (69 percent). Similarly, more mothers (66 percent) were informed of the statute by their employers in Oregon than in the other states in this study. Though admitting that the legislature did not make her job any easier by passing a statute that was in many respects too vague, Roberts has continued to work toward enforcement of the statute. A strong believer in employer education, she has sent letters to all employers, advising them about the requirements of the statute; is a frequent speaker about the statute both within her state and nationally; and has, independently of this study, conducted her own questionnaires of the statute's impact on Oregon employers.

CONCLUSION

In the wake of the passage of new laws, confusion and debate are to be expected. The experiences in Wisconsin and Oregon nevertheless underscore several lessons for other states considering parental leave legislation.

Definitional issues have clearly dominated enforcement adjudication following enactment of state parental leave bills. These issues concern the definitions of "covered employers," "serious health condition," and requirements for reinstating employees after leave.

Perhaps the most challenging of these definitional issues has been the substitution of other accrued leave. There is often conflict between the statutory and the regulatory language. In addition, there may even be conflict concerning this issue within the statute itself, as seen in the Oregon statute. Finally, there may be conflict between the provisions of the bill and pre-existing company policy or collective bargaining contracts.

This ambiguity provokes several questions that are commonly debated through litigation: What is binding and enforceable—the statute or the regulations? What is binding and enforceable—the statute or pre-existing employer–employee contracts or employer policy? In Oregon, the Court of Appeals in *Portland General Electric* will directly confront the issue of whether Oregon's parental leave statute overrides pre-existing conditions on the use of paid accrued leave.

Thus, one clear lesson from the above discussion is that, in terms of substitution rights, definitional issues and procedures should be explicitly spelled out in the parental leave statutes themselves. Clear statutory definitions make legislative intent much easier to discern.

Another lesson concerns enforcement. In the states in which the enforcement agency was named and its responsibilities delineated, there has been greater protection under the new laws.

The experience in these two states also highlights the important role played by proactive administrative agencies such as DILHR's Equal Rights Division in Wisconsin and BOLI's Civil Rights Division in Oregon in notifying employees of their statutory rights and monitoring the implementation of the state parental leave statutes. As discussed above, employers and employees are thus more likely to be aware of their rights and obligations. Furthermore, many of the complaints filed in Wisconsin and Oregon were settled within their enforcement agencies' investigations and administrative hearings, thereby controlling the number of costly and lengthy civil lawsuits.

Finally, the experiences in the four states examined in this study underscore the importance of providing some degree of wage replacement for the leave period. Underlying the substitution controversy is the employed parent's need to procure wage replacement for the leave period, such as through use of accrued paid sick days. It is not a coincidence that many of the cases brought before these two states' administrative and circuit courts (*Richland*, *Najera*, and *Portland General Electric Company*) involved new fathers' requests to substitute accrued paid sick days for part of their statutory parental leave. These fathers wanted to spend time with their families after the birth or adoption of a child, but they also needed to derive some income during the period of leave. It is clear that for those parents wishing to take concurrent parental leaves, the loss of income poses economic hardship, thereby underscoring the importance of wage replacement provisions.

It is our hope that the unresolved issues highlighted in this examination will serve as guideposts for policymakers, state administrators, and employers considering or currently engaged in any stage of the legislative process, from proposal to implementation to enforcement.

REFERENCES

1 Correspondence with John C. Metcalf, Director, Human Resources Policy, Wisconsin Manufacturers and Commerce Association, April 24, 1991.

2 Interview with Karen Ordinans, Associate Director, American Federation of State, County, and Municipal Employees, Council 48, April 23, 1991.

3 Interview with Susan Brehm, Attorney, Center for Public Representation, April 15, 1991.

4 Interview with Leanna Ware, Program Supervisor, Equal Rights Division, Department of Industry, Labor, and Human Relations, April 26, 1991.

CONCLUSION

The purpose of *The State Parental Leave Study* was to discern the most important questions in the policy debate and to provide reliable data to address these concerns. This study found that implementing the new laws was neither difficult nor very costly. This may be due to the fact that at this early stage of investigation, most mothers' leave-taking patterns did not change after enactment. One of the most interesting trends, however, was that fewer women took less than the 6 weeks off which are medically advisable for physical recovery. Fathers' leave-taking did change slightly—a greater number of fathers took time off to spend with their families after their children were born or adopted.

When mothers had access to wage replacement through temporary disability insurance, far fewer of them took less than 6 weeks off. This was especially true of lower-income women. Thus, parental leave legislation should eventually be coupled with efforts to increase the availability of temporary disability insurance.

APPENDIX

STATE ADVISORY PANELS

The following individuals attended a meeting in their states in 1988 or 1989 to identify the questions that should be addressed in this study. Subsequently, they were given the opportunity to review the resulting questionnaires. The conclusions of this study are those of the authors and have not been verified or endorsed by the individuals listed below. Job titles are listed at the time of the state advisory panel meetings.

Minnesota

David Allen, Resources for Child Caring, Inc.
Dale Anderson, Greater Minneapolis Day Care Association
Win Borden, Minnesota Chamber of Commerce & Industries
Aviva Breen, Commission on the Economic Status of Women
Kay Castonguay, Feminists for Life on Minnesota
Nancy Christensen, Minnesota Chamber of Commerce & Industries
Diane Du Bay, Minnesota's Women's Press
Carol Freeman, Minnesota Federation of Teachers
John Gehan, Greater Minneapolis Day Care Association
Constance Haberle, Minnesota Association of Townships
Mike Hickey, National Federation of Independent Business—Minnesota
Mollie Hoben, Minnesota Women's Press
Jane Koskinen, UMD Child Care Center
Glenda Martin, Minnesota Women's Press
Pamela Mattick, Center for Child & Family Studies
Diane McCarthy, Office of Lt. Governor Marlene Johnson
Gretchen Musicant, Minnesota Nurses Association
Joy Peterson, YWCA/Minneapolis
Rick Scott, Minnesota AFSCME
John Sylvester, Minnesota School Boards Association
Laura Toreting, YWCA/Minneapolis
Judith Traub, National Council of Jewish Women, Greater Minneapolis Section
Minnesota Study Sponsor:
Lieutenant Governor Marlene Johnson

Oregon

James Art, State of Oregon Executive Department
Jeanne Atkins, United Way of the Columbia-Willamette
Jim Bernau, National Federation of Independent Business
Marilyn Coffel, Bureau of Labor and Industries
Gary Conkling, Tektronix, Inc.
Janis Elliot-Wotton, Department of Human Resources
Kristine Gebbie, State of Oregon Health Division
Joyce Grant-Worley, State of Oregon Health Division
Colleen Haas, Local Government Personnel Institute
Senator C. T. Houck
Cheryl Hunter, Oregon AFL-CIO
Edward Johnson II, State of Oregon Health Division
Susan Jossi, US Bancorp
Representative Mike Kopetski
James Lace, M.D., American Academy of Pediatrics
Mary Louise McClintock, Department of Human Resources
Fred Miller, State of Oregon Executive Department
Mary Wendy Roberts, Bureau of Labor and Industries
Kathleen Saadat, Office of the Governor
Pamela Stebbeds, Oregon Commission on Child Care
Brent Sumner, State of Oregon Health Division
Ragen Tiemaine, Oregon Commission on Child Care
Tom Tison, Oregon Commission on Child Care
Janice Yaden, Assistant to the Governor for Human Resources
Oregon Study Sponsor:
Governor Neil Goldschmidt

Rhode Island

Dan Beardsley, Rhode Island League of Cities and Towns
Renee Brochester, Children's Friend & Service
Jacqueline Cugini, Department of Labor
Michelle Dally, Governor's Office
Senator Jennie Day
Donald Fowler, Rhode Island Chamber of Commerce Federation
Carol Gauthier, Eastland Bank
Marianne Jardine, Gilbane Building Company
Gail Johnson, Options for Working Parents
Arthur Jones, New England Telephone
Judith Jones, State of Rhode Island and Providence Plantations
Representative Linda Kushner
Terrance Martiesian, National Federation of Independent Business
Representative Helena McDermott
Karen McIninh, SEIU 134, AFL-CIO
Marti Rosenberg, Rhode Island Working Women

STATE ADVISORY PANELS—CONTINUED

Bradford Southworth, State Personnel Administrator
Edna St. Germain, Department of Labor
Rhode Island Study Sponsor:
Lieutenant Governor Roger Begin

Wisconsin

Representative Jeannette Bell
Ellen Bravo, Milwaukee Nine to Five National Association of Working Women
Susan Brehm, Center for Public Representation
James Buchen, Wisconsin Manufacturers and Commerce
Senator J. M. Davis
John Forrester, Office of Lieutenant Governor
John Hessler, Hessler & Bonady
Professor Janet Hyde, University of Wisconsin-Madison
Representative Margaret Lewis
Carol Lobes, Deputy Administrator, DILHR
Edward J. Lump, Wisconsin Restaurant Association
John Metcalf, Wisconsin Manufacturers and Commerce Association
Richard Moriarty, Director, Legal Services Bureau, DILHR
Joe Rice, Mulcahy & Wherry, S.C.
Representative Betty Jo Nelson
David Newby, Wisconsin State AFL-CIO
Senator John Plewa
Hannah Rosenthal, Wisconsin Women's Council
Representative Peggy Rosenzweig
Bill Smith, Wisconsin Federation of Independent Business
Senator Joe Strohl
Louise Trubeck, Center for Public Representation
Representative Sue Vergeront
Leanna Ware, Equal Rights Division, DILHR
Representative Rebecca Young
Wisconsin Study Sponsor:
Scott McCallum

PANEL OF NATIONAL EXPERTS

The Panel of National Experts is not responsible for the authors' interpretations of the data.

Arthur Emlen, Portland State University
Sheila Kamerman, Columbia University
Joan Kuriansky, Older Women's League
Donna Lenhoff, Women's Legal Defense Fund
Joseph Pleck, Wheaton College
Linda Tarr-Whelan, Center for Policy Alternatives
Eileen Trzcinski, Cornell University
Wendy Williams, Georgetown University Law School

[A representative from a national business organization whose name is withheld by request]

Special thanks also to:

Heidi Hartmann, Institute for Women's Policy Research

HOW TO FIND QUESTIONNAIRES AND STATUTES

There were 20 versions of the questionnaires used in *The State Parental Leave Study*, five for each state. If you are interested in receiving a copy of one or more of the questionnaires, please refer to the following list. To order, please specify your choice by state and questionnaire title.

Minnesota, Oregon, Rhode Island, Wisconsin

- Pre–enactment for biological mothers
- Post-enactment for biological mothers
- Pre-enactment for adoptive mothers
- Post-enactment for adoptive mothers
- Employer questionnaires

Contact:
Families and Work Institute
330 Seventh Avenue, 14th foor
New York, NY 10001
(212) 465-2044

If you are interested in receiving a copy of the state leave statutes and administrative regulations, contact:

Minnesota
Department of Labor and Industry
Labor Standards Division
443 Lafayette Road
St. Paul, MN 55155-4306
(612) 296-2282

Oregon
Bureau of Labor and Industries
Public Information Office
1400 SW Fifth Avenue
Portland, OR 97201
(503) 229-6644

Rhode Island
Department of Labor
Division of Labor Standards
220 Elmwood Avenue
Providence, RI 02907
(401) 457-1808

Wisconsin
Department of Industry, Labor, and
Human Relations
Equal Rights Division
201 East Washington—Room 403
Madison, WI 53708
(602) 266-1997

SUMMARY OF STATES WITH PARENTAL, FAMILY, OR MEDICAL LEAVE LEGISLATION*

State (Effective Date)	Size of Covered Employers (Number of employees)	Employees Covered	Length of Leave (weeks)	Provision	Continuation of Employer Contribution to Pre-existing Health Benefits?	Job Guarantee	Comments
CONNECTICUT (July 1, 1990)	≥250; phase down to ≥100, 1991; ≥75, 1993	All employees	16 for private (12 in 1990); 24 for state employees—over 24 month period	Birth/adoption Family illness Personal illness	State employees—yes; employee contributes portion of premium that employer would have contributed had employee not taken leave. Private employees—no.	Same or equivalent position	
DELAWARE (July 20, 1984)		Only adoptive parents among state employees	6	Adoption	No explicit provision	No explicit provision	
DISTRICT OF COLUMBIA (April 1, 1991)	≥50; Phase down to ≥20, 1994	All employees	16 (over 2 years)	Birth/adoption/placement of foster child Family illness Personal illness	Yes—employer must maintain employee's health insurance under same conditions as if employee had not taken leave.	Same or equivalent position	
ILLINOIS (1989)		All state employees	52	Birth/adoption Family illness	No—employer must continue health insurance, but employee pays full premium.	Same position	
KENTUCKY (July 15, 1982)	≥1	Only adoptive parents	6	Adoption of child under age 7	No explicit provision	No explicit provision	
MAINE (Aug. 4, 1988)	≥25	All employees	8 (over 2 years)	Birth/adoption Family illness Personal illness	No	Same or equivalent	Bill extending leave to 18 weeks pending in Legislature.

*Other states with pending legislation include California, Georgia, Hawaii, Indiana, Iowa, Kansas, Massachusetts, Nebraska, Nevada, New Hampshire, New York, Pennsylvania, and Vermont.

Sources: Center for Policy Alternatives, Women's Legal Defense Fund, and Families and Work Institute, 1991

SUMMARY OF STATES WITH PARENTAL, FAMILY, OR MEDICAL LEAVE LEGISLATION

State (Effective Date)	Size of Covered Employers (Number of employees)	Eligibility	Length of Leave (weeks)	Provision	Continuation of Employer Contribution to Pre-existing Health Benefits?	Job Guarantee	Comments
MARYLAND (July 1, 1988)		All state employees in Executive Branch; based on supervisory discretion.	12	Birth/adoption/foster care Family illness	No	Same position	
MINNESOTA (Aug. 1, 1987)	≥21	All employees	6	Birth/adoption SF 409 allows employees to use accrued sick days to care for sick child.	No—employer must continue to make insurance coverage under its group rate available to employee, but can require employee to pay the entire premium.	Same or comparable	SF 409 also allows employees 16 hours of unpaid leave each year to attend school conferences or classroom activities.
NEW JERSEY (May 1, 1990)	≥100; Phase down to ≥75, 1991; ≥50, 1992	All employees	12 (over 2 years)	Birth/adoption Family illness	Yes—employer must maintain employee's health insurance under same conditions as if employee had not taken leave. [See "Comment."]	Same or equivalent position	• On April 1, 1991, the Mercer County Superior Court Judge struck down the portion of statute requiring employers to continue employee's health benefits while on leave. • Legislature is considering a bill providing up to 6 months of medical leave.
NORTH DAKOTA (Jan. 1, 1990)		All state employees	12	Birth/adoption/foster care Family illness	No—employer must provide continued coverage, but is not required to pay costs of coverage.	Same or equivalent position	

Sources: Center for Policy Alternatives, Women's Legal Defense Fund, and Families and Work Institute, 1991

SUMMARY OF STATES WITH PARENTAL, FAMILY, OR MEDICAL LEAVE LEGISLATION

State (Effective Date)	Size of Covered Employers (Number of employees)	Eligibility	Length of Leave (weeks)	Provision	Continuation of Employer Contribution to Pre-existing Health Benefits?	Job Guarantee	Comments
OKLAHOMA (Aug. 20, 1989)		All state employees	12	Birth/adoption Family illness	No—employee can continue state group insurance if pays full premium.	Reinstatement to original position	
OREGON (Jan. 1, 1988)	≥25	All employees	12	Birth/adoption	No	Former or comparable	• In Oregon, if at least one parent works for a covered employer, the two parents must split the 12 weeks granted by statute into non-concurrent parts unless their employers agree to other terms. • The Oregon Senate on April 30, 1991 approved Senate Bill 39, allowing employees to take 12 weeks of job-guaranteed leave over a 2 year period to care for seriously ill family members.
RHODE ISLAND (July 1, 1990 for family and medical; July 1, 1987 for parental)	≥50	All employees	13 (over 2 years)	Birth/adoption Family illness Personal illness	Yes—employer must maintain its contribution to employee's pre-existing health benefits. However, before taking leave, employee must pay employer a sum equal to the premium required to maintain employee's health benefits. Employer will return this payment to employee within 10 days after returning to job.	Same or equivalent	

Sources: Center for Policy Alternatives, Women's Legal Defense Fund, and Families and Work Institute, 1991

SUMMARY OF STATES WITH PARENTAL, FAMILY, OR MEDICAL LEAVE LEGISLATION

State (Effective Date)	Size of Covered Employers (Number of employees)	Eligibility	Length of Leave (weeks)	Provision	Continuation of Employer Contribution to Pre-existing Health Benefits?	Job Guarantee	Comments
SOUTH CAROLINA (1986)		All state employees	5 days of paid accrued sick leave (over 2 years)	Family illness	No explicit provision	No explicit provision	
WASHINGTON (Sept. 1, 1989)	≥100	All employees	12 (over 2 years)	Birth/adoption Family illness	No	Same or equivalent position	Bill extending statute to include medical leave has passed the Assembly.
WEST VIRGINIA (July 7, 1989)		All state employees	12	Birth/adoption Family illness	No—employer must continue group health insurance, but employee pays full premium.	Same position	
WISCONSIN (April 25, 1988)	≥50	All employees	6 2 2 (No more than 8 weeks over 1 year for a combination of reasons related to family and medical leave)	Birth/adoption Family illness Personal illness	Yes—employer must maintain its contribution to employee's pre-existing health benefits. If health insurance coverage is provided, the employer may require that the employee pay the full premium for 8 weeks of coverage into an interest-bearing escrow account.	Former or comparable	

Sources: Center for Policy Alternatives, Women's Legal Defense Fund, and Families and Work Institute, 1991